Public Utilities

FORTNIGHTLY

NOVEMBER 21, 1946

In this Issue—

DALE WHITE
ERNEST R. ABRAMS
ERNEST W. FAIR

Utility Addresses before the American Bar Association—APPENDIX

ELMER A. SMITH
OSWALD RYAN
DONALD R. RICHBERG

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Utilities Almanack 641
Business-managed Power on Columbia River ..... (*Frontispiece*) 642
Power in the Reaches of the Pacific Northwest ..... *Dale White* 643
The Hazard of New Inventions ..... *Ernest R. Abrams* 651
What about the Oldsters? ..... *Ernest W. Fair* 658
Government Utility Happenings 662
Wire and Wireless Communication 664
Financial News and Comment ..... *Owen Ely* 667
What Others Think 671

Nationalization of Industry *versus* Private Enterprise
Golden Anniversary Meeting of the Pennsylvania Water Works Association

The March of Events 679
The Latest Utility Rulings 686
Utility Addresses before the American Bar Association—Appendix 691
Combined PUR and Titles and Index (selected preprints of Cases) 722

Advertising Section

Pages with the Editors 6
In This Issue 10
Remarkable Remarks 12
Industrial Progress 21
Index to Advertisers 32

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Pages with the Editors

Now that the campaign oratory is behind us, the time has come to decide just what the American people really meant when they voted so heavily in favor of such a big turnover in Congress. Naturally, spokesmen for various schools of thought spring into action at this point and claim that the voting is a clear indication of a "people's mandate" for this or that objective of their special choosing. Sometimes these claims are a little hard to reconcile with the electoral statistics. For example, there is former Secretary of Commerce Wallace's preelection statement that Democratic loss of control in Congress could only be charged against the failure of the party to remain loyal to the more progressive features of the New Deal, and that the only way that party could regain such control would be by regaining that loyalty (and, presumably, turning more left wing than ever).

DONALD R. RICHBERG

But when we check off the names and count noses of those Democratic members who will be among the missing when the roll is called for the 80th Congress next January, what do we find? We find the heaviest casualties among those Democrats who have always been outstanding in their loyalty to the more left-wing tendencies of the New Deal. On the other hand, that faction of the party (centered chiefly in the southern states) most at odds with Mr. Wallace's ideas seems to have survived pretty well. The administration's loss of Senate control turned chiefly on western and eastern seats where the CIO-PAC was supposed to be very strong.

ELMER A. SMITH

One difficult line of interpretation, which the individual Congressman is going to have to thresh out for himself, is the temper of the majority of American people on labor reform legislation. An honest review of the recent campaign forces us to admit, reluctantly, that neither of the major parties was entirely honest in dealing with this issue. Hardly

any realistic citizen would dispute that the question of whether or not we need labor union reform legislation is one of the major issues confronting our country today.

A MAJORITY of such citizens might even go so far as to say that it is THE leading domestic issue. But to see and listen to the various political candidates of both parties, performing in the recent campaign, one would think that no such issue was before the American people at all. Candidates were perfectly willing to talk about the virtues and vices of the dying OPA, of the horrors of Communism, and the heroism of our brave veterans, and many other topics of local interest. But when the specific question of amending the Wagner Act was broached to many candidates, they suddenly seemed to get hard of hearing.

AND yet it is the very Congress which was elected as the result of this campaign which will have to deal with this question of whether new labor legislation is needed. Perhaps the recent election returns will give the average Congressman enough insight upon how the people really feel about this matter for him to act in a decisive and forthright fashion. Perhaps the threat of punitive political action by organized groups has been finally exploded to the satisfaction of some of our more timid Congressmen. But certainly the atmosphere would be clearer today if the voters had not been compelled to cast ballots on a number of important but unknown quantities, of which labor reform legislation is only one.

OSWALD RYAN

PUBLIC utilities are almost certain to be in the limelight when this question of labor reform legislation comes before the next Congress. This can be seen in the remarks of a leading speaker before the public utility section of the American Bar Association during its recent convention in Atlantic City. Following our annual custom (interrupted only by the hiatus in conventions during the war) we are publishing as an appendix in this issue the three principal papers delivered before the utility section.

DONALD R. RICHBERG, whose address on the need for compulsory arbitration in the settlement of utility labor disputes is reproduced as part of this special appendix, is too well known to warrant more than a particular reference at this point. That is the fact that MR. RICHBERG, now practicing law in Washington, is the special adviser to members of both the House and Senate Labor committees, who expect to sponsor labor union reform legislation in the next Congress. For this reason, the remarks of MR. RICHBERG, who has a long and seasoned record of expert judgment in the field of drafting labor legislation (including co-authorship of the Railway Labor Act), take on added significance, for our readers, when he directs his attention to the field of public utility labor relations.

THE other two speakers, whose addresses are reproduced in the special appendix in this issue, are OSWALD RYAN, member of the Civil Aeronautics Board (and former chief counsel of the Federal Power Commission, as well as sometime contributor to this magazine), and ELMER A. SMITH, senior attorney of the Illinois Central System.

THE next number of this magazine will be out December 5th.

The Editors

In This Issue

In Feature Articles

Power in the reaches of the Pacific Northwest, 643.
Future of light metals industry, 644.
Bonneville Power Administration, 646.
Municipal power systems, 648.
Opposition to public ownership, 650.
The hazard of new inventions, 651.
Impact of new inventions on old, 652.
Purpose of candle consumption, 653.
Public response to new recording method, 654.
"Nontechnical" report on possible future use of nuclear reactors, 656.
What about the oldsters, 658.
Decline of sense of hearing, 659.
Discrimination against the older worker, 661.

In Government Utility Happenings

Election trends on public ownership, 662.
New atom board named, 662.
Flood-control curb to cut jobs, 663.
REA boosts Colorado loans, 663.

In Wire and Wireless Communication

USITA wants antistrike law, 664.
Carrier phones in rural areas, 664.
Intrastate toll rate cuts, 665.
FCC proposed recording order hit, 665.
More interest on AT&T bonds, 665.
Telegraph strike stayed, 666.
Representative Lea attacked, 666.

In Financial News

Fair return set at 6-6½ per cent by most state commissions, 667.
Wall Street analyses of utility securities, 667.
Electric-gas holding company stocks, 669.
Capitalization outstanding — distribution of gross revenues (chart), 670.

In What Others Think

Nationalization of industry *versus* private enterprise, 671.
Golden anniversary meeting of the Pennsylvania Water Works Association, 673.

In The March of Events

Coffin award reinstated, 679.
Immediate start on Georgia project proposed, 679.
SEC gets exchange proposal, 680.
Application filed with FPC, 680.
Commission reopens proceedings, 681.
Temporary authorization granted, 681.
News throughout the states, 682.

In The Latest Utility Rulings

Denial of injunction against service interference by labor union affirmed, 686.
Authorization of natural gas pipe-line construction denied, 686.
Telephone association not a public utility, 687.
Curtailment of gas service for space heating approved, 688.
Telephone service ordered notwithstanding duplication, 688.
Informal notice is criticized by commissioner, 688.
Rates for telephone directory advertising held nondiscriminatory, 689.
Certificate awarded carrier on split vote of commission, 689.
Reduction of bus fare ordered, 689.
Miscellaneous rulings, 690.

Appendix—American Bar Association

The application of the antitrust laws to regulated industries, 691.
Public utility problems in the air industry, 706.
Labor disputes and public utilities, 714.

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129-160, from 65 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ERIC JOHNSTON
President, Motion Picture Association.

"No law in the history of a democracy has been effective without public support."

SEVELLON BROWN
Editor, Providence Journal-Bulletin.

"When the flow of ideas and information is blocked, human progress and creativeness languish."

ERNEST T. WEIR
Chairman, National Steel Corporation.

"I submit that anything not subject to compromise is not a subject for collective bargaining. It is a plain hold-up."

PAUL A. PORTER
Administrator, Office of Price Administration.

"Most labor leaders have learned that precipitous wage increases do not necessarily result in increased standards of living for the laboring man."

IRA MOSHER
Chairman of the board, National Association of Manufacturers.

"Reconversion in record time, top wages, and high employment were not accomplished by a broken-down economic system, destined for the scrap heap."

PHILIP D. REED
Chairman of the board, General Electric Company.

"The system of private competitive enterprise would not survive, even in America, if the industries of most of the countries of the world became state monopolies."

HENRY FORD II
President, Ford Motor Company.

"I doubt very much whether the American wage earner really believes that anybody can guarantee security in this world. What he really wants is steady employment at a fair rate of pay."

WALTER B. WEISENBURGER
Vice president, National Association of Manufacturers.

"Currently, unions may be reluctant to strike for higher wages in the face of the public's temper against strikes. So they will lean heavily, as usual, on the administration to make a new wage pattern behind which this can be achieved."

CHARLES E. WILSON
President, General Motors Corporation.

"The attempt to control prices without wage control and rationing not only fails at the basic anti-inflation job but also forces the country into black markets. A sound wage-price policy must be worked out or there will be continued industrial unrest."

HARVEY F. McPHAIL
Director of power utilization, Bureau of Reclamation.

"Nothing is more stimulating to individual initiative and private enterprise than a good injection into a community of low-cost public power."

BENJAMIN H. NAMM
President, National Retail Dry Goods Association.

"It is no longer sufficient for retailers to sell merchandise and nothing more. Our real job today is to sell our [free enterprise] system along with our products."

DAVID E. LILIENTHAL
Chairman, Atomic Energy Commission.

"The dominant fact of our time is the towering place of the machine, of applied science, in the lives of mankind."

LOUIS BROMFIELD
Novelist, farmer, and banker.

"We tax ourselves more and more in order to hold down living costs, devouring our economic vitals to do so and bringing ourselves constantly nearer to totalitarianism government and lower and lower standards of living."

WILLIAM GREEN
President, American Federation of Labor.

"Labor has come to the conclusion that the time has come to drop artificial government controls which have kept the nation's economy off balance. If we ever expect to restore peacetime conditions in America, we must first restore peacetime freedoms."

PAUL S. ELLISON
Director of public relations, Sylvania Electric Products, Inc.

"It is going to tax and take all our creative ingenuity to demonstrate before the world that competitive enterprise is not an archaic and decadent form of society, that competition among individuals does work to elevate the lot of mankind."

HUGH B. MITCHELL
U. S. Senator from Washington.

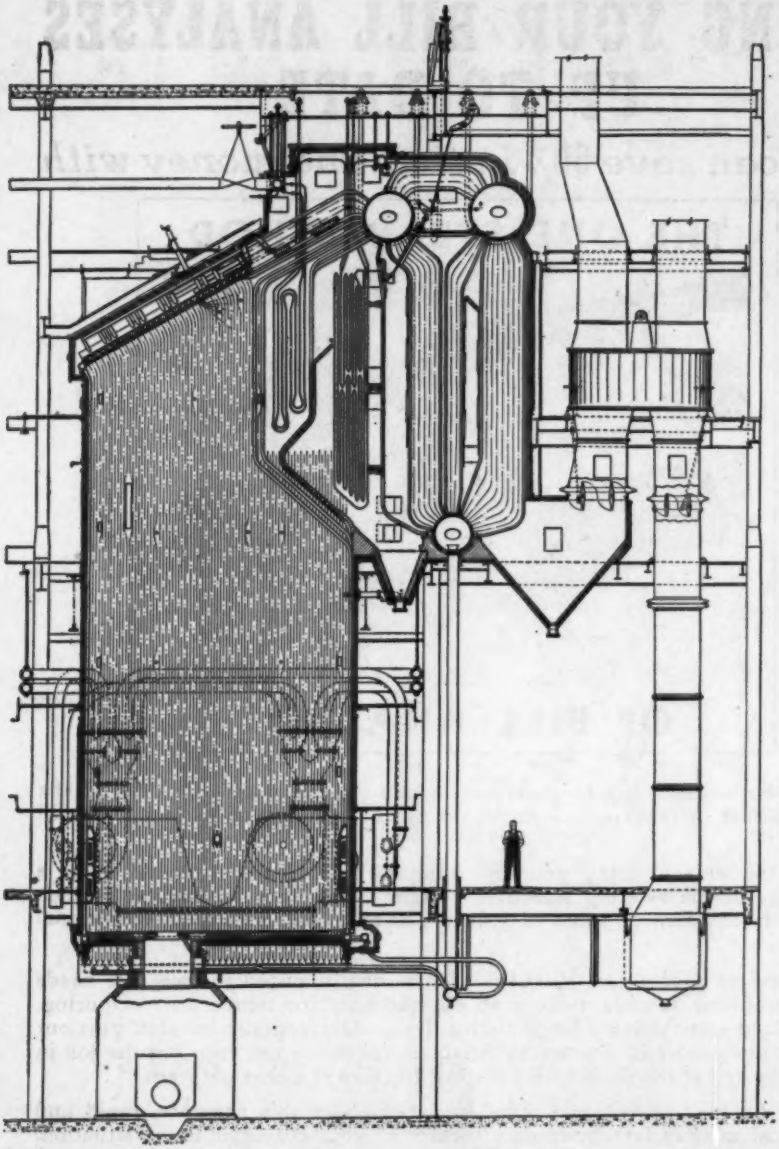
"The great Federal power projects in our state, which were essential to victory in the war and which provide the foundation for economic development of the Pacific Northwest, are predicated upon the wide distribution of power through public bodies."

MESSMORE KENDALL
President, Bill of Rights Commemorative Society.

"The fetish of the protection of rights of minorities in America has well-nigh obscured the rights of the long-suffering majority. . . . The rights of the majority to the pursuit of life, liberty, and happiness should not be at the mercy of a militant minority, such as we witness today."

EDITORIAL STATEMENT
The Journal of Commerce.

"Fair competition is the keystone of the American system of business regulation. There is room under this system for both large and small distributors, who are at liberty to vie with each other in serving the public. The antitrust laws are designed not to suppress the large enterprise, but only to make sure that it does not abuse the power derived from mere size."



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DODGE DIVISION OF CHRYSLER CORPORATION

Utilities Almanack

November

21	T^h	¶ *Mid-Southeastern Gas Association begins eighth annual meeting, Raleigh, N. C., 1946.*
22	F	¶ *Independent Natural Gas Association begins meeting, Fort Worth, Tex., 1946.*
23	S^a	¶ *New Jersey Utilities Association begins meeting, Absecon, N. J., 1946.*
24	S	¶ *Joint meeting of Cuban and Florida Sections of American Water Works Association ends, Havana, Cuba, 1946.*
25	M	¶ *National Association of Electric Companies, Public Relations Clinic, begins, Atlanta, Ga., 1946.*
26	T^u	¶ *Florida Independent Telephone Association ends meeting, Ocala, Fla., 1946.*
27	W	¶ *Interstate Oil Compact Commission winter quarterly meeting will be held, Dallas, Tex., Dec. 9–11, 1946.*
28	T^h	¶ *Midwest Industrial Gas Council will hold meeting, Chicago, Ill., Jan. 24, 1946.*
29	F	¶ *American Gas Association, Residential Gas Section, Eastern Natural Gas Sales Conference, will be held, Pittsburgh, Pa., Feb. 13, 14, 1946.*
30	S^a	¶ *American Gas Association, Residential Gas Section, Midwest Gas Sales Conference, will be held, Chicago, Ill., Mar. 17, 18, 1946.*

December

1	S	¶ *New England Gas Association will hold meeting, Boston, Mass., Mar. 20, 21, 1946.*
2	M	¶ *National Exposition of Power and Mechanical Engineering begins, New York, N. Y., 1946.*
3	T^u	¶ *American Gas Association—Edison Electric Institute, Accounting Conference, will be held, Boston, Mass., Apr. 7–9, 1946.*
4	W	¶ *Oklahoma Independent Telephone Association begins meeting, Oklahoma City, Okla., 1946.*

Courtesy, Puget Sound Power & Light Company

Business-managed Power on the Columbia River

Pictured is Puget Sound Power & Light Company's Rock island plant, located twelve miles south of Wenatchee, Washington.

Public Utilities
FORTNIGHTLY

VOL. XXXVIII, No. 11 NOVEMBER 21, 1946

Power in the Reaches of the Pacific Northwest

Struggle for the markets between subsidized government projects and unsubsidized private companies, the Bonneville Power Administration, public utility districts, municipal lighting systems, and private plants. Power interconnection contracts of the Northwest Power Pool, distinguished from BPA, required for interconnection and coöperation.

BY DALE WHITE*

THE giants are still slugging it out in the Pacific Northwest despite eight years of unrelenting battle and complicated strategy. It's colossal Federal-owned Bonneville and the Goliath of public power groups against the private utilities, a two-against-one combination generating a political fight as hot as their high-voltage power lines.

It is difficult to understand why power should be political dynamite in the Northwest where electric rates are among the lowest in the nation, and where they were low before the advent of the two Federal projects. It is not the case of consumers crusading for better service and lower rates. It is not economics—but politics.

The stakes are big because whoever controls the generation and transmission of electrical energy can wield much influence in industry, transportation, and communications—a potent plum the public power advocates would make the basic ingredient for eventual socialization of American industry.

* Professional writer of business articles, Ramsay, Montana.

Collaboration so far being anathema to the administrators, a businesslike settlement of the controversy would appear unlikely. Contract-hungry Bonneville seems determined to drive its best customer out of business. Yet these same antagonists joined hands successfully in the operation of a little-known but vital war weapon—the Northwest Power Pool—a borrowing round robin that fed ample power to the war industries and war-worker swollen cities of five northwestern states.

There is no mistaking this fact: Through the construction of such dams as are included in the TVA program, Boulder, Shasta, Grand Coulee, and Bonneville, the Federal government is definitely in the power business, now and for the future. Too many hundreds of millions have been spent in their construction and development programs to discard them in order that private interests might once more have the field to themselves. At the same time, too many millions of small investors' moneys are placed with private power companies, too many cities and states look to tax revenues accruing from their profitable operation, and too substantial an amount of Federal taxes would be lost if they were forced out.

VOTERS of Washington and Oregon, major battleground for the 8-year feud, have expressed themselves on how they feel about this issue of public *versus* private power: Keep both; the competition is swell.

The people of the Northwest accepted these dams with considerable enthusiasm, including the private utilities which looked on them as regional developments and anticipated distributing part of the power generated. They halted their own major construction projects, since it was obvious there would be a vast supply of power on hand which they hoped to purchase in part on workable contracts and distribute over their existing transmission lines.

But why bother about a regional feud? For two reasons: First, as the Bonneville project derives its being and support from Federal taxes, every taxpayer has stock in its program, profitable operation, and conduct; second, a precedent is being set here for government *versus* business and government and business.

With more than a quarter of a billion dollars already spent on the Bonneville-Grand Coulee projects and their administration, taxpayers now face the eventuality of several times that amount being invested in dams proposed or contemplated for the Columbia river basin. These will provide an ultimate capacity of 15,000,000 kilowatts of public-generated power in an area that consumed only 3,353,500 kilowatts of public utility-and private utility-generated power at the peak of its war production period.

The two dams now have a surplus of better than a half-million kilowatts of power on hand, yet their immediate plans call for the installation of additional generators to increase their output considerably.

DURING the war over two-thirds of Bonneville power contracts and income was from cancellable short-term industrial contracts which lopped off fast as war production tapered off. The 1944 income statement showed a minimum of interest charges of $5,-

141,057 and a charge for depreciation of $2,258,529, totaling $7,399,586, which had to be met regardless of cancellations. These fixed charges alone were greater than the total gross revenues that year from all noncancellable contract sales for power.

A query as to how the present surplus would be absorbed following the expected slow-down period during reconversion elicited two unpractical possibilities: The electrolytic industries (such as aluminum and magnesium plants) would use great quantities once they resumed production, or the city of Seattle would, when converting to electric residential heating.

The future of the light metals industries in the Northwest is all fouled up in problems relating to monopolies, transportation rates, lack of enough high-grade ores in the region to allow profitable operation, surplus commodity disposal, and adjustment of the power rate; and electric residential heating is barely beyond the experimental stage, too expensive in maintenance and installation to permit its widespread adoption.

PUBLIC power advocates attempt to justify this on a cart-before-the-horse theory that, where a vast amount of cheap hydroelectric power is available, industrial expansion follows as a matter of course. Although electrical energy is important, its availability and cost are of small importance as a drawing card to industry as compared with markets, raw materials, reasonable transportation costs, and taxes. The only instance where its cost approaches equal importance is in the electrochemical and electrometallurgical processes or refrigeration.

Were the future of the Northwest's industrial activity tied up largely with electrolytic processing, some reasonable surplus of power generation might be justified. But industrial research experts will tell you these are a small factor in an over-all development.

Although private and municipal systems contend they could have approximately met the tremendous wartime demands for power through their 5-state interconnections, except for special war loads brought into the area to utilize Bonneville power, none will deny that the BPA made a very substantial contribution. Now, however, BPA publicists are taking credit for the war production record in the area and insisting the Pacific campaign would have lasted another two years but for Bonneville and Grand Coulee's output. Industrialists and production men would have you believe the availability of cheap hydroelectric energy was only one of several potent factors contributing to production and victory.

MEMBERS of the Socialist party point with pride to the Bonne-

¶ "IT *is difficult to understand why power should be political dynamite in the Northwest where electric rates are among the lowest in the nation, and where they were low before the advent of the two Federal projects. It is not the case of consumers crusading for better service and lower rates. It is not economics—but politics.*"

ville project, claiming it as one of several chicks successfully hatched in their long-range program toward nationalization of industry and the elimination of private enterprise. Far from viewing with alarm the activities of these social planners, the Department of Interior has provided them with remunerative berths on the Federal payroll where they are economically free to further their avowed mission.

Evidently their plan for public control of power production as a means to direct industry and communications has possibilities, because it is being given serious consideration as a means of restraining Germany and Japan. The rebirth of the Axis nations' war-making potentialities can be charted and hamstrung if the power needed for armament, aircraft, and aluminum industries is fed by an internationally controlled power pool.

This plan, as outlined in a book published by the Brookings Institution, is considered far more practical to insure the peace than those calling for an army of occupation, restriction of raw mineral imports, or converting Germany to an agricultural nation. It is also favored because it would be an unseen control, less irritating to the conquered people, and one not prohibiting establishment of a well-rounded economy.

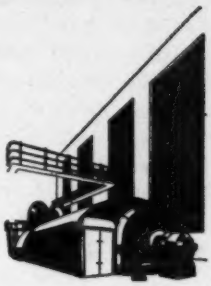
The parallel is obvious. In the United States there is much subsidized power, and subsidies mean control by the politicians of the product subsidized.

CLARION for public power is the Bonneville Power Administration, marketing agency for the two dams. Its administrator is smooth, persuasive, and positive Dr. Paul J. Raver. BPA is a wholesaler whose outlets are municipal lighting systems, public utility districts, coöperative associations, and private utilities, with the first three having purchase preference over the last. It may serve large industrial accounts direct but has no authority to enter into retail distribution. Not subject to Federal or state regulation, it can and does build its own transmission lines, even though in many instances the purchasing companies would build these lines and take the power at the plant.

BPA has labored diligently to rid the region of private utilities, although the latter are by far its best customers. It sings over and over the familiar refrain about BPA rates being a yardstick against which the rates of private utilities can be measured. This is unfair because BPA compares its wholesale rate made possible by subsidy and cost charge-off against the private companies' retail rates. The financial structures are so different as to make a fair comparison impossible.

BPA advertises the cheapest wholesale rates in the nation but omits several qualifications, the most important being that Bonneville's is the cheap rate claimed only if the consumer operates at a peak at all times of the year. BPA cannot substantiate its claims to have brought cheap power to the West, because the municipal systems, such as the outstanding ones at Tacoma and Seattle, will be joined by the private utilities in proving they fathered cheap power rates among the lowest in the nation before the two dams were even blueprinted.

PURCHASE prices are frequently arrived at by multiplying a com-



Future of Light Metals Industries

"THE future of the light metals industries in the Northwest is all fouled up in problems relating to monopolies, transportation rates, lack of enough high-grade ores in the region to allow profitable operation, surplus commodity disposal, and adjustment of the power rate; and electric residential heating is barely beyond the experimental stage, too expensive in maintenance and installation to permit its widespread adoption."

pany's net earnings 15 times. To a public body which pays no taxes the private company's tax outlay is regarded as net profit. Therefore, it is commonly willing to pay 15 times the total of net earnings, plus taxes, an inflated sum allowing small return on the investment and a large commission for the agent or group promoting the deal. Promotors' fees run pretty high, too.

Puget Sound Power & Light Company paid 1944 Federal taxes amounting to $3,257,759.65. State, municipal, and property ad valorem taxes totaled $4,433,988.96. If the deal being promoted by Guy C. Myers is consummated, the state may be compelled to call an extraordinary session of the legislature to adjust state taxes upward to meet the estimated withdrawal of income which will result from the sale of this tax-paying company to non-tax-paying public agencies. Oregon has a similar situation with regard to the Pacific Power & Light Company of Portland, which a coöperative, headed by Charles Baker, would like to buy.

ALLIED with Bonneville in the controversy are the public utility districts (PUD's), countywide or less, with the right to construct, purchase, or condemn utility properties for the generation, transmission, distribution, and sale of electric energy.

It is understandable that BPA should do everything to influence voters to form PUD's. However, it seems questionable that a government agency should issue publicity leaflets bearing the signature of the U.S. Department of Interior, The Bonneville Project, in bold type. These inferred that only Bonne-

ville power was cheap power, and offered substantial inducements in the form of promised transmission lines.

Later the signature of the government agency was removed from the propaganda leaflets, yet a marked similarity remained between material put out by the Bonneville publicists and PUD supporters. Where a PUD was successfully voted in, it was not unusual for the local supporters to turn up on the Bonneville payroll.

So far no report of expenditures by the BPA in behalf of the Bonneville service or the Bonneville-for-Portland committees campaigning (in vain) for a Portland PUD has ever been made to the secretary of state as required by the Oregon Corrupt Practices Act.

While testifying before the congressional committee on appropriations in 1942, Dr. Raver was asked about the project's electioneering for PUD's. Raver said he felt his people were "confining themselves to informative discussion." A Congressman then expressed the opinion he felt they were electioneering and that this was a violation of the Hatch Act.

Raver was asked if he was willing to take the responsibility for activities of this kind, in view of the Hatch Act. He replied: "I do not think we have anything in the record to substantiate this charge."

PUBLIC power advocates have two blue-ribbon exhibits in the city-owned and-operated lighting systems of Tacoma and Seattle, Washington. Tacoma has long boasted the lowest electric rates in the country. Both have the advantage of paying no Federal taxes, only a portion of state and local taxes, and being able to finance their projects through the sale of tax-exempt revenue bonds. The city of Seattle received an outright Federal grant of $1,835,000 toward the construction of its major power project, Ross dam.

A municipal system, as an outlet for Federal-generated power, has preference for power over the demands of private companies. It would follow that the systems of Seattle and Tacoma would cease construction of major generating plants—as private companies did—in favor of distributing Bonneville power. Instead their construction programs now under way will make them eventually independent of Bonneville, except during periods of prolonged drought or low water.

The BPA and its allies are trading power-house punches with a combination of some of the most progressive electric utilities in the country. Not only have they matched their rates with those of public agencies enjoying tax benefits, but they have pioneered new industrial and agricultural uses for electricity, stressed rural electrification, and promoted a national campaign advertising the resources and advantages of the area as a drawing card for payroll building industries and the tourist trade.

Despite being discriminated against and having to fight for their life, they are BPA's major distributing outlet. In round numbers they bought 2,000,000,000 kilowatt hours from Bonneville in the twelve months ending July, 1945. Public utility districts, municipalities, and coöperatives bought 849,000,000. So private concerns represented a market 2¼ times greater.

IT is in the administration of the Northwest Power Pool—a 5-state

interconnection of power facilities—that is found an amazing story of coöperation among government, municipal, and private power men. Perhaps it was because engineers were at work, not politicians. Why cannot this practical situation continue? Because it is all snarled up in the type of long-term contracts the private utilities will accept, plus the kind BPA has to offer.

BPA offers terms which, if accepted, would require a private utility to deliver Bonneville power through its own system to a competing coöperative or public body, also give BPA option which could be exercised at any time to purchase the entire system on behalf of government or other public bodies or any part of the system in an area where a public body was authorized and desired to purchase the company's facilities. "Any part" might mean a very vital part of the system which, if eliminated piecemeal, would render the entire system useless. Also, the private company would have to agree not to make any expenditures or take any action for the purpose of opposing the formation of any public power distributing agency, nor to contribute to any group or individuals who might do likewise, and to keep its employees in line with these demands. The last is serious because it involves coercion and a rein on freedom of speech.

MARKETS cannot be developed unless long-term contracts assuring a dependable supply of power are possible. So far, private companies have had to use Bonneville power on a hand-to-mouth basis of short-term and erratic supply.

If the Bonneville project would confine itself to efficient administration and the wholesale and generation operations, leaving the competitive retail field to those who excel in it, BPA revenues would soar and the project could be viewed as a fine example of government coöperating with business.

WHAT do public powerites hope to achieve in the Pacific Northwest? Obviously, complete and unrestricted control of the generation and distribution of electric energy.

Bonneville may hope to encourage a wider use of hydroelectric power but not have this materialize because the very distributing agencies they foster would not be as efficient as the private utilities which are up against stiff competition and must scratch for business.

What do the private utilities hope to achieve? Businesslike and nondiscriminatory contracts between themselves and BPA, not on a short-term, hand-to-mouth basis which gags expansions, but on one of long-term dependable supply so they can work in the

¶ "PURCHASE *prices are frequently arrived at by multiplying a company's net earnings 15 times. To a public body which pays no taxes the private company's tax outlay is regarded as net profit. Therefore, it is commonly willing to pay 15 times the total of net earnings, plus taxes, an inflated sum allowing small return on the investment and a large commission for the agent or group promoting the deal. Promoters' fees run pretty high, too.*"

field in which they excel: increasing the use of electricity.

They want to be freed from unfair comparisons of their operations with those of Bonneville. If the government is going to take part in the power business, let it operate on a businesslike basis. They want to be freed of threats by a governmental agency of installing distribution systems duplicating theirs if they refuse to sell parts of their systems to public agencies.

They want this issue of public or private ownership of power to be decided by the will of the people as expressed in their voting and not by a governmental agency, and that all parties abide by the people's choice.

REFERENDUM 25, voted on in November, 1944, gave Washington residents a chance to express their opinions on public ownership of all power-generating and transmission facilities in the state. Some inkling of the hard-fought campaign behind the scenes is seen in the struggle to bring it to the people for a vote. Introduced as an initiative to the state session, it was enacted by the legislature but held by the state supreme court (unanimously) to be subject to referendum.

The referendum was defeated by a resounding majority. The total vote in King and Pierce counties, which contain Tacoma and Seattle and their municipal electric companies, was more than 60 per cent opposed.

At the same election, public power advocates were defeated in their third attempt to establish a PUD in King county, even after they had eliminated from the proposed district much of the territory (Seattle metropolitan area) that had voted against a PUD in previous elections.

THE people of Washington and Oregon—where the Federal government has had every chance to justify its program and convert a large following—seem opposed to any program which would eliminate competition and set up an unrestricted power monopoly and the complete control by the Federal government of all electric rates and services in the area.

BPA's public relations have been such a problem that the cause of public ownership has had a setback instead of impetus. People seem to distrust public monopolies as much as the other kind. The Federal government, which has done so much to break monopolies in other fields, appears to want to set up one of its own in this very vital industry.

This problem of the government entering fields heretofore operated and developed by private enterprise can be a serious one in the future, judging by the dissension and deterrents created by just this single instance of the Northwest power controversy.

However, if an example of government and business coöperating on a friendly and businesslike basis can be continued, as it was first established in the operation of the Northwest Power Pool, then the frontiers of America can be expanded to catch up with our dreams for the future. Both are an integral part of this nation and its potentialities. The American way of life will be preserved. What's even better, it will pay its own way.

The Hazard of New Inventions

Developments in the arts that have changed markets to the disadvantage of those supplying existing demands—what will be the effect of atomic energy on established power and fuel facilities?

By ERNEST R. ABRAMS*

In the 157 years since this nation was founded innumerable inventions and developments in the arts have changed the course of public demands, often to the detriment of established facilities and devices. Some of the newer devices and techniques have, to all practical purposes, completely destroyed the old. Others have merely changed the character of public demand. And still others have greatly stimulated the use of existing products or devices. Yet no "rule of thumb" exists for prior determination of the impact of new inventions upon the old.

Perhaps the most devastating impact of new devices and methods has occurred in the field of transportation. Between 1796 and 1838, the Federal government spent $6,821,200 — an enormous sum in those days—on construction of the National turnpike between Cumberland, Maryland, and Vandalia, Illinois. This was the first outlay made by the government for internal development. Yet, the economic worth of this post road was materially lessened by the time of its completion by the construction of canals and steam railroads. Within three decades, however, canals and canalized rivers were reduced largely to the status of taxpayers' subsidies by the interlacing of the industrial East with steam railroads and their extension to the Pacific coast. And within the business life of many of us, the prosperity of rail carriers has been substantially lessened by the construction of high-speed motor highways, with their profit potentialities further threatened by expansion of passenger and freight air lines.

Similarly, the economic value of passenger and vehicular ferries—but not of car ferries—has been largely destroyed by the building of tunnels and bridges. For more than 200 years ferries constituted the only means of transportation between the island of Manhattan and Long island in the New

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York city area; but the opening of Brooklyn bridge in 1883 and of Williamsburg bridge in 1904 made a sizable dent in ferry-line profits, while the Interborough subway tunnel between Manhattan and Brooklyn, which was placed in operation in January, 1908, completely erased the earning power of East river ferries. In much the same way, the opening of the first Hudson & Manhattan Railroad tube between Manhattan and New Jersey in February, 1908, and of the Holland vehicular tunnel in November, 1927, all but destroyed the value of North river ferries.

THE impact of the cheap automobile and hard roads upon the horse-drawn vehicle followed a similar pattern. According to U.S. Census data, the manufactured value of autos, bodies, and parts increased by 180,100 per cent between 1899 and 1937, while the manufactured value of carriages, wagons, and sleighs dropped 95 per cent. In the field of carriages, buggies, and surries, alone, manufactured value dropped from $55,800,000 in 1904 to a mere $110,000 in 1937, or by about 99.8 per cent. Moreover, introduction of the cheap and efficient passenger car and its country cousin, the farm tractor, along with improved roads, took their toll of draft animals. Where census figures show some 26,500,000 horses and mules on American farms in 1915, their number had dropped to around 12,750,000 by 1945, or by more than half in thirty years.

Turning to a field more closely associated with public utilities, the widespread appeal of mechanical refrigerators has all but stopped the sale of old-fashioned iceboxes. According to U.S. Census of Housing figures, sales of mechanical refrigerators—electric, gas, or oil—rose from 5,000 in 1921 to 900,000 in 1929 to 2,800,000 in 1937. By 1940, 15,093,346 of the reporting 34,205,414 occupied dwelling units in the country had mechanical refrigerators, as compared with 9,253,063 having iceboxes. The impact of mechanical refrigeration on the icebox can be shown in another way—1937 sales of iceboxes were less than a third of those in 1929 and only a tenth of those in 1925, the peak year for icebox sales.

WE could continue discussing the impact of the trolley and gasoline motor bus on the street railway, of busses and subways upon elevated railways, of individual passenger cars and interurban busses on electric interurban railways; but the foregoing are sufficient to identify the character of impact of new inventions which have largely destroyed public demand for the old. Suppose we turn now to inventions or developments in the arts which have only partially destroyed the market for established goods or devices, or which merely have altered the character of public demand.

Many of us can recall when the bicycle was the most popular individual means of conveyance and recreation around the turn of the century. According to the U.S. Census of Manufacturers, about 2,000,000 of them were sold in 1899, practically all in adult sizes and costing an average of $60 apiece. But it wasn't long before improvement in performance and reduction in the price of automobiles, along with better roads and a boost in family incomes, began cutting into bicycle sales. Where one auto could

carry the entire family as a unit, it took 4 or 5 bicycles to do the job and Junior was usually a quarter of a mile ahead or behind. Under the impact of automobile purchases and the blight of the business depression, bicycle sales hit a low of 350,000 in 1932.

THEN the adversity they were experiencing caused the more alert managements in the bicycle field to reappraise their possible markets and to recognize that bicycles no longer had an adult appeal. So they turned to the children of America, around 2,000,000 of whom reached the bicycle-riding age of nine each year. During the 4-year 1937-1940 period, an average of 1,000,000 bicycles were sold annually, while 1941 sales, due to the fear that automobile production might be curtailed in the event we became involved in World War II, jumped to 1,850,000. But by this time 85 per cent of all bicycles produced were in children's sizes.

Present bicycle sales are running at the rate of 100,000 a month and they cost an average of $35 at retail. But it isn't correct to speak of bicycles as being "manufactured" now. About 40 concerns manufacture bicycle parts, which are then sold to around 12 assemblers who stick them together. And all of them appear to be making money.

It's unfortunate that no dependable statistics on candle production are available for the days before "coal oil" and electricity came into common household use. It's due, in part, to the fact that so many folks made their candles in the old days. At any rate, the first census figure on candle sales is for 1904 when the American public bought $3,889,000 of them at retail. Equally unfortunate, nobody knows for sure how many American homes were lighted electrically in 1904. The earliest National Electric Light Association statistical bulletin sets the number of household electric consumers at 3,100,918 in 1912, so it must have been substantially under that figure eight years earlier. But by 1939, the retail value of candle sales had risen to $6,330,000 and it now runs about $10,000,000 a year. During the war, our armed forces consumed about a million pounds of candles a month but no data on cost are available.

THE purpose of candle consumption has, however, changed greatly in the past forty years. Where they were primarily an illuminating device around the turn of the century, about five-eighths of all candles sold since 1939 are for religious use in Catholic, Jewish, and Episcopal churches—in that order. Another eighth are used as ornaments on Christmas trees and birthday cakes, with the balance being burned on dinner tables to soothe women's complexions. While no con-

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firming statistics are available, since the manufacture of candles is a minor adjunct of the chemical industry, according to the census of manufacturers, it appears probable that candlemakers are showing bigger profits today than when their product was a common illuminating device. At least, neither "coal oil" nor electric lighting put them out of business.

Let's take a look at a few other lines of business, without devoting too much attention to them. Although the population of continental United States increased some 72½ per cent between 1899 and 1937, the use of cotton fabrics increased 101 per cent, while linen consumption declined 44 per cent. Where cigarette consumption increased 4,226 per cent in those years, that of cigars remained practically constant although it is now on the rise. About a million more cigars will be smoked in 1946 than in 1939, which will raise annual sales to the highest level since 1930. Where consumption of American-produced beet sugar increased 1,688 per cent between 1899 and 1937, use of home-grown cane sugar rose only 67 per cent. And, surprisingly, where consumption of alcoholic beverages barely kept pace with population growth during those years, that of soft drinks increased nearly half again as fast as the hard variety.

THE most glowing field in which new inventions have stimulated use of older products is that of phonograph records. In 1899, when wireless was merely a gleam in Marconi's one good eye, about 2,800,000 records, all of cylindrical shape, were sold. And although radio production started in 1922 when 100,000 sets were sold for an estimated $5,000,000, sales of phonograph records kept mounting until 1929 when we bought around 65,000,000 of them for about $55,000,000. Then the bottom temporarily dropped out of the record business. Not only did the business depression reduce public buying power to bare essentials, but the appeal of the smaller-type, low-priced radio consumed most of the public's cash that could be spared for home entertainment. At any rate, less than 10,000,000 records were sold in 1932.

It wasn't long, however, until the listening public began to protest the type of entertainment coming over the radio. Not only was the quality of music pouring out of loud speakers descending to lower and lower levels, but an appealing tune could not be repeated at the listeners' option. So a few courageous folks in the record business decided the public might be willing to pay for the kind of music it wanted to hear, when it wanted to hear it. In this search for a new market, they were aided by the scientists of Western Electric's research division — now Bell Telephone Laboratories—who perfected a means of converting sound waves into electric impulses. In this way the range of recording was increased from 100-700 cycles to 30-5,500 cycles and it became possible to capture many of the delicate overtones that had been lost by earlier recording techniques.

PUBLIC response to this new recording method came quickly. Record sales jumped to 50,000,000 in 1939, 75,000,000 in 1940, 100,000,000 in 1941, and 156,000,000 in 1945. More than that, 1946 record sales, in the belief of *Record Retailing*, leading trade

Purpose of Candle Consumption

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publication in the record field, will approximate 215,000,000 on the basis of experience in the first seven months of the year. Even so, only a little more than a third of the prospective demand will be satisfied. A Gallup customer-intention poll, taken a few months before VJ-Day, indicated 600,000,000 records could be sold in the first full postwar year, if they could be made; but much of the strictly phonograph industry had disappeared by 1929, having become an adjunct of the radio manufacturing industry, and about 70 per cent of all radios being made today are radio-phonograph combinations.

From these few samples in the field of industry and service, we have seen that new inventions and techniques exert different types of impact upon devices or methods in common use. In some cases the economic value of existing facilities or goods has been almost completely destroyed. In others the appeal of things has shifted from one sector of the public to another, or the character of demand has changed. In still others the demand for existing devices or services has been vastly stimulated by the appearance of new inventions. Nothing in the history of these shifts in the fickle climate of public wants, however, suggests that a yardstick or rule of thumb for measurement of the impact of new inventions upon the old can be created in advance of exertion of the impact. Nevertheless, suppose we speculate a bit about the probable impact of atomic power upon present methods of electric generation.

A GROUP of scientists identified with the chemical industry recently handed to Bernard M. Baruch, U.S. delegate to the UN Atomic Energy

Commission, a "nontechnical" report on the possible future use of nuclear reactors in the generation of electric energy. Assuming a 100 per cent load factor and an over-all capital cost of 3 per cent, which so far have been achieved only in the minds of theorists, these scientists stated that a coal-burning plant of 75,000-kilowatt capacity, "built in a normal locality in the eastern United States," at a cost of $10,000,000, could produce power at 26 per cent lower cost at the busbar than could a nuclear plant costing $25,000,000, if the delivered cost of 13,500 BTU bituminous coal was $7 a ton; but, should the price of coal at the plant rise to $10 a ton, power generation costs would be the same in both types of plants.

The more this report is studied, the more evident it becomes that these scientists have wandered somewhat afield. They state, for instance, that "the nuclear power plant, in connection with the modern gas turbine, might be desirable as operating or stand-by plants to existing large utilities," but any electrical engineer who proposed the construction of a power plant at a cost of $333 per kilowatt for stand-by use probably would soon find himself under the observation of psychiatrists.

NEVERTHELESS, the opinions expressed in the report cannot be lightly tossed aside because of a few absurdities. We know that the cost of bituminous coal—the major fuel for electric generation—has been mounting steadily for more than a decade and there is every reason to believe that continued research and development will reduce the cost of nuclear reactors and the plants designed to utilize them. So it behooves every designing engineer to consider carefully the potentialities of this new form of energy.

In all the speculation concerning the possible use of nuclear reactors, however, no one as yet has seriously suggested that it can be geared directly to industrial equipment or household appliances. In every proposed method of use, it is to be a mere substitute for present sources of heat or mechanical energy. So even were it adopted for electric generation, the need of transmission, transformation, and distribution facilities still would exist. The only possible economies to result from use of nuclear reactors as against fuels or falling water in the electric utility field would appear to be in generation costs alone.

ACCORDING to the *EEI Statistical Bulletin* No. 13 and Federal Power Commission data, the generating ratio of all plants contributing to the public supply in 1945 was 50½ per cent and not the per cent these chemists assumed. Because of good water conditions, the ratio for all hydro plants was 61.7 per cent, while that of steam plants was 46.7 per cent. In addition, the average cost of generation in fuel-burning plants, with all fuel reduced to a coal-equivalent basis and costing $4.50 a ton delivered, was 2.9 mills per kilowatt hour. This represented about 35 per cent of total generation costs, when operation and maintenance expense, depreciation, property taxes, and a capital over-all cost of 4½ per cent are included. No one knows today what the operating, maintenance, and depreciation costs of a nuclear power plant would be. But it does seem rather certain that the total volume of expenses that are susceptible

of reduction through the use of nuclear reactors is in the neighborhood of 3 mills per kilowatt hour and that actual savings would fall substantially below this ceiling.

Obviously, then, since the electric energy produced through the use of nuclear reactors would have no more "zip" than that produced in hydro or fuel-burning plants, no direct public demand for nuclear-produced power in preference to electricity generated by use of fuel can be anticipated. So none of the factors which made the public prefer railroads to turnpikes or canals, or tunnels and bridges to ferries, or automobiles to horse-drawn vehicles, appears likely to influence future demands. Nor does it appear that the proportion of savings possible through use of nuclear reactors in power generation would be of sufficient significance to greatly influence wholesale or retail rates.

THERE will, of course, be isolated instances where the use of nuclear power plants can fill an unsated need in the generation of electric energy. The installation of this type of generation facilities in naval craft might obviate the need of coaling stations and vastly extend their range of operation. Use of this type of generation might permit year-around operation of mining and other undertakings in the far North, where navigation and overland delivery of fuel supplies are limited to a few months of the year; but no data so far disclosed would indicate that nuclear reactors can seriously threaten the use of fuel or falling water in power generation.

Even were the generation of power with nuclear reactors economically feasible, there would still be one high hurdle it probably would have to jump. During 1945 some 12 per cent of the installed electric generating capacity of all plants contributing to the public supply was contained in governmental power district stations and 88 per cent of that capacity was in hydro plants. Moreover, these governmental district plants accounted for 14 per cent of 1945 generation. Included are TVA, Bonneville, and Grand Coulee which are having a difficult time finding an outlet for their power supplies, now that their war plant customers no longer are in operation.

It appears unlikely, then, that the Federal government, with exclusive control over nuclear reactors, would license their use by private power companies within transmission range of any of its "power babies."

There's a case in point which some may have forgotten. When a Birmingham mechanic invented the modern loom, about 100 years ago, Prime Minister William Gladstone asked one of his technical advisors what effect it might have on the British economy. "Just this," was the answer, "some day, it will be something you can tax."

"THERE must be some less costly, less violent, and more sensible way for grown men—both employees and employers—to reach a contract than to have these crippling strikes that hurt labor's prestige and pocketbook as well, and do more damage to innocent bystanders than they do to the parties actually in dispute."

—EDITORIAL STATEMENT,
The New York Times.

What about the Oldsters?

Some of the known factors utility executives, in the opinion of the author, have to weigh in determining the availability of older men and women for jobs.

By ERNEST W. FAIR*

THESE are the days when the older men and women in our employment are apt to find the going roughest; employment office managers tell us that on today's labor market, if you're past forty-five, most employers aren't interested in you—there are too many young men and women on the labor mart looking for jobs!

There are many fictions current as to abilities of the older worker not only in utility organizations but in every other phase of business and industry. Today, more than at any time in the past, every utility executive has to weigh all of the known factors in careful balance before he hires an older man or woman for any of the numerous jobs he has to fill.

In such instances it will pay us to examine thoroughly the fact and fiction in the case and learn from the experience of industry as a whole and when we have this data then we can decide whether the individual job in our individual place of business can be better filled by an older or a younger worker.

I am making no attempt to argue for either group in these paragraphs—only to separate the fact and fiction in the case of the older worker, for every utility executive must, of course, make an individual decision on each individual employment as it pertains to his business and not a general over-all picture of the industry as a whole.

Analysis after analysis has shown in studies of physiology and psychology of age that the rapidity of the decline in quality and quantity of performance after forty years is less than the average worker or employer believes it to be. In most cases studied the decline has been so small as to be unimportant.

ONE of the arguments against the older worker relates to higher costs for compensation insurance and pension plans and this is mostly fiction, for insurance companies usually do not

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consider age as a factor in compensation rates.

Another popular argument is that the man nearing forty slows down in muscular strength and endurance; his reflexes slow up, and his hearing and eyesight begin to fail. These changes do most certainly occur but whenever we consider such changes we must constantly bear in mind that changes with age do not necessarily mean decline. Compensation takes place for every deviation, and if certain capacities diminish, others are enhanced. For example, as the speed of reaction is lowered with age, there occurs a compensatory increase in endurance. This fact has been revealed in many different ways. In athletic performance there is a positive correlation between maturity and success in competition requiring endurance. Records for sprints are held by young men but older men invariably hold those for marathon running. It is also to be noted that greater differences can be observed in an exercise endurance test in persons in the same age group than are observed between younger and middle-aged groups. And tests have also shown the loss of mere physical strength is normally compensated for by the increased skill and good judgment resulting from long training and experience.

EXPERTS advise employers to keep in mind the fact that chronological age, as measured in years and months, is not the same as physiological age. There are great individual differences in the physical stamina of older persons, and chronological age is hardly ever a reliable index. As far as utilities are concerned a rule might well be established that no worker is any older than his vision, his motor skill, or his productivity. The important factors to consider in employing older men and women relate to their "functional age" or ability to perform efficiently the tasks involved in each job we have to fill.

Let's look specifically at these three factors taking the sense organs first. All of the senses show a decrease in acuteness with age. In most cases these changes are of little significance however, and on the contrary sometimes work out to advantage, in such cases as smell, taste, vibratory sensation, and pain. The main change visually is in one's ability to focus on near objects. This can today be completely corrected by means of eyeglasses. There is the slight contraction of the visual field, or ability to "see out of the corner of one's eye." Dark adaptation, or ability to see in the dark, also declines. Depth perception, or ability to judge distances, shows an improvement up to the age of thirty to thirty-five. Then there is a gradual decline which becomes fairly marked after sixty. At this age, however, one test of 8,400 employees showed a high percentage was able to pass the test as those in their twenty's.

THE sense of hearing also shows some decline with age. At one test by Bell Telephone experts of a million visitors to its World's Fair exhibits it was shown that from the age of about twenty on there is a gradual loss of acuity to all tones, but the loss of sensitivity to the high tones is greater. The degree of retrogression is not predictable on the basis of chronological age, since most people at eighty have no greater auditory impairment than others at fifty.

The Decline of Sense of Hearing

"THE sense of hearing . . . shows some decline with age. At one test by Bell Telephone experts of a million visitors to its World's Fair exhibits, it was shown that from the age of about twenty on there is a gradual loss of acuity to all tones, but the loss of sensitivity to the high tones is greater. The degree of retrogression is not predictable on the basis of chronological age, since most people at eighty have no greater auditory impairment than others at fifty."

Motor activity, although controlled by nervous impulses, is to a great degree dependent on anatomical structures. It reflects the alterations which occur in the body. Extensive studies of adult motor activity made at Stanford University, however, did not reveal sudden alterations in relation to any age group. On the contrary there was a gradual rise in quickness of response in childhood and youth, followed by a slow decline in maturity. Numerous studies have shown that the older employees tend to have fewer accidents, however, so other factors appear to compensate for this change in age.

The decline in mental functions is less than is generally believed. In an extensive study of adult learning at Columbia University it was shown that although the ability to learn showed a definite rise in the early years, the decline between thirty and thirty-five was very slight. It has been found that the greatest difficulty can be expected when the learning of new material requires the "unlearning" of previously learned and established patterns.

THE most obvious mental defect in advanced years is the failure of memory for recent events. Details of more remote occurrences are remembered vividly.

Those mental functions which are more complex and free from factors involving physiological speed and effort show little decline with age. Thus, insight for meanings, recognition of generalized truths, critical judgment, and standards of excellence tend to remain undiminished to the end of the life span.

Little information is available from which it is possible to determine the rôle of age in industrial output. In a report to the United States Secretary of

Labor by the Committee on Employment Problems of Older Workers, the results showed no definite relation between age and output. In another study the average age of workers whose output was considered excellent was forty-seven and one-half years, while the average age of those in the inferior grade was forty-one. There seems to be little evidence that the output of older workers is less than that of younger ones.

The relation of age to frequency of labor turnover is of importance and here it has been found that the older worker remains on a job longer than does a younger one. Several studies have shown that the greatest occupational mobility took place under the average age of thirty-five. There was little shifting to new occupations thereafter. As compared with men in their twenties, the older workers are a distinct asset in terms of continuance on the job.

PERHAPS the most common reason offered for discrimination against the older worker is that he is more accident prone than the younger worker. Study after study has shown the contrary; that the accident rate is highest for the younger workers. The fact that he is more careful plays an important rôle.

On the average it is undoubtedly true that there is more illness among older people than younger ones. The development of more and better preventive medicines and more education as to physical care is reducing these figures daily, however. Modern medicine is today making it possible for people to live longer and work efficiently and profitably while they are doing it.

Experienced employers advise that older men should be kept on their present jobs and their skill and experience used as long as possible. They advise use of caution in job assignment of older men to avoid the misuse of skills and other assets of the older workers that in many cases represent a long-term investment of the employer in training and experience.

THIS same experience has shown the older worker has definite assets in skill, patience, sobriety, loyalty, better morale, endurance for routinized work, greater safety, reduced absenteeism, and better discipline. On the liability side there are found certain disadvantages, some of which are at variance with the assets because of the differing experiences of employers. These include slowness, inability to do heavy work, poor health, inaccuracy, impatience with younger or less skilled workers, inability to learn, greater severity of accidents when they occur.

But for each disadvantage there can generally be found compensating advantages that must be considered by the utility executive in assigning older men to jobs.

Integration of the older men into the working force becomes a delicate process, requiring a careful analysis of each worker.

The older worker has a definite place in every utility.

¶ *"Our basic problem is to direct our abilities to production to meet the peacetime needs of all."*

—W. AVERELL HARRIMAN,
Secretary of Commerce.

Government Utility Happenings

Election Trends on Public Ownership

NORTHERN Pacific crosscurrents were noted in voting on public ownership matters. Washington state voters turned down (nearly 2 to 1) Initiative 166, which would have required approval by the voters for the issuance of securities to finance utility property acquisitions. One large utility company had opposed this as being only a halfway measure. Oregon voters decisively defeated 8 proposals to create public utility districts in the following places: Baker county, Malheur county, Harney county, Clatsop county, Marion county, Linn county, Junction City, and North Lincoln county. Many of these were "repeaters" and the Linn proposition was up for its fifth try.

Portsmouth, Virginia, voters turned down a proposal to issue $4,200,000 bonds to erect and operate a city power plant.

New Atom Board Named

CONTROL of the atomic bomb and of all its works was taken away from the Army on October 28th with the appointment by President Truman of the Atomic Energy Commission. The commission of five civilians is headed by David E. Lilienthal, who resigned as chairman of the Tennessee Valley Authority.

In naming the men on whom Congress has conferred powers unprecedented in American history, Mr. Truman pledged unbending efforts to avoid an atomic war.

He asserted that mastery of the terrible nuclear force would be used for the good of mankind.

The momentous announcement, making a reality of the atomic monopoly created by the Atomic Energy Act of last July, was made at a special White House news conference. Mr. Lilienthal and his colleagues, selected after much deliberation, sat at one side of the crowded room while the Chief Executive spoke. The four besides the chairman were:

Lewis L. Strauss, a West Virginian but a New Yorker by adoption, a banker and wartime Rear Admiral in charge of ordnance inspection.

William Wesley Waymack of Illinois, editor and Pulitzer prize winner, economic and fiscal adviser to government agencies, and active worker for international peace.

Robert Fox Bacher of Ohio, atomic physicist, attached to the Los Alamos laboratory where the first atomic bomb was test-exploded, and scientific consultant to Bernard M. Baruch, American representative on the United Nations Atomic Energy Commission.

Sumner T. Pike of Maine, businessman and government official who has served in the Commerce Department, the Securities and Exchange Commission, and the Office of Price Administration.

Mr. Lilienthal, a native of Illinois, has won high prestige for his administration of the vast TVA power project. His reputation was enhanced recently when he served as chairman of the State Department's board of consultants who drafted a report on the international control of atomic energy. This document served as the basis of American policy

proposals before the United Nations Atomic Energy Commission.

With the atomic commission in the President's office sat Gordon Rufus Clapp, general manager of TVA. Mr. Truman honored him with a career promotion to the chairmanship of TVA, which Mr. Lilienthal vacated November 1st. The President, it was suggested, nominated Clapp to succeed Lilienthal because, next to his predecessor, he is the one man best able to withstand the perennial patronage attacks of Senator McKellar (Democrat, Tennessee).

Clapp, who was forty-one on October 28th, has been associated with TVA since its creation in 1933. As assistant director of personnel until 1935, and its personnel director until 1939, he has been on the main firing line of the McKellar campaign to make TVA a Tennessee patronage pool.

Clapp, a graduate of Lawrence College and the University of Chicago, had been general manager of the agency since 1939. In appointing him, Mr. Truman said that a large degree of TVA's success has been due to Clapp's skill as an administrator. And, the President noted, he has shown himself to be "a formidable and resourceful fighter when TVA was under unfair attack."

The term of service of the new appointee will run until May, 1954. He is first subject to Senate confirmation, however.

Flood-control Curb to Cut Jobs

Economies resulting from President Truman's order curtailing flood-control expenditures likely will mean dismissal of half of the Army Engineer Corps' 40,000 employees, a government official said recently. This source said several division and district offices already have been closed.

The President originally directed that flood-control expenditures be held to about $90,000,000, rather than the $190,000,000 which Congress appropriated. Subsequently this was raised to about $125,000,000, in view of the fact that much of the work already had been contracted for.

"However, because of the cut from the original figure," the official said, "it is necessary to cut down on personnel."

He said there will be a big cut in employees along the lower Mississippi, that many dredge and towboat employees will be laid off, and that, as an example, the Southwest division at Dallas, with a force of about 5,000, will be cut to around 2,700.

The official said district offices at Providence, Rhode Island; Syracuse, New York; Cincinnati, Ohio; San Antonio, Texas, already had been closed and that the Middle Atlantic division with headquarters at Baltimore was merged with the North Atlantic division headquarters at New York.

REA Boosts Colorado Loans

The Rural Electrification Administration has approved construction of power lines to serve an additional 10,000 farm consumers in Colorado. The new lines, REA officials said, will cut in half the number of farm homes in the state that still are without any electric service.

Funds for the power lines have been borrowed in recent months from the REA by rural electric coöperatives. Six thousand of the homes to be served are in three large unelectrified areas in northeastern Colorado, southeastern Colorado below the Arkansas river, and in eastern Colorado between the Arkansas and Platte rivers.

The other consumers to be served are in smaller unelectrified areas throughout the state.

Since the REA was established in 1935, the number of electrified homes in Colorado has increased from 7,000 to 30,000. Records of REA show that more than three-fourths of the farms electrified are in 11 counties where rural electric coöperatives were organized in the early years of the program.

Wire and Wireless Communication

USITA Wants Antistrike Law

THE first major utility group to suggest Federal legislation to outlaw public utility strikes appears to be the United States Independent Telephone Association. An antistrike law for public utilities, and the implied result of more or less compulsory arbitration, has been frequently suggested in many quarters and has actually been before the Congress. But no utility group openly endorsed the idea in any form prior to the USITA action.

The demand for Federal legislation by the USITA is all the more noteworthy because of the typically local characteristics of the independent telephone company industry. The text of the resolution is as follows:

> BE IT RESOLVED by the United States Independent Telephone Association assembled in annual convention in Chicago, Illinois, October 16, 1946, That it is the sense of this association that the Congress of the United States should, at the earliest possible time, enact appropriate legislation to correct the economic unbalance now existing throughout the country, much of which is due to the operation of present Federal labor laws.
>
> *The operation of the National Labor Relations Act,* as administered by the National Labor Relations Board, has resulted in giving to organized labor an unfair and inequitable advantage in dealing with management when employees are being organized, or later during negotiations with unions. The employer has been unduly and unfairly discriminated against by the provisions of this act.
>
> *The Fair Labor Standards Act of 1938* likewise imposes unjust and unreasonable penalties upon employers, who have honestly endeavored to comply with interpretations of this law announced by the administrator, where those interpretations are afterward overruled by the courts. The Fair Labor Standards Act has become entirely unfair to the employer in numerous cases.
>
> *This act should be amended* to remove excessive and unjust penalties and should likewise be amended by adding a section providing for a reasonable statute of limitations for filing wage suits.
>
> *The Congress of the United States should further enact appropriate legislation* providing for a more orderly and peaceable method of negotiating differences arising between management and organized groups of employees. Legislation is sorely needed to prevent continued threats of strikes and work stoppages. Employees should be granted the legal right to decide as individuals whether they should join unions or continue membership and should be free from coercion by either unions or management. This association believes in fair play for every individual, whether employee or employer, and believes that the ultimate prosperity of every American citizen depends upon the enactment and administration of a law which provides equal rights for both employee and employer.
>
> We believe that the health, welfare, and safety of the people of the United States demand a prohibition against strikes in essential industries, particularly those industries which furnish water, electricity, and communication services. Police and fire protection should never be interrupted by strikes. *Accordingly, this association earnestly petitions the Congress of the United States promptly to enact into law suitable legislation designed to prohibit strikes in these essential public utility callings.*

Carrier Phones in Rural Areas

THE American Telephone and Telegraph Company disclosed recently

that it would begin rural telephone service in six states soon. Utilizing electric power lines, the company said it would make available to subscribers in Colorado, North Carolina, South Carolina, Virginia, Texas, and Washington, equipment which otherwise is not available over existing power lines.

Participating in the project are five Bell system companies, two independent companies, four Rural Electrification Administration-financed power companies, and three independent power companies.

Looking toward extension of telephone service in rural sections, the Western Electric Company, AT&T's equipment manufacturing subsidiary, already has started production of telephone equipment for this new market.

The company also disclosed that an experimental project for rural telephone lines was scheduled for this fall in Morton Mills, Iowa.

The power line carrier system of rural telephone service was launched at Jonesboro, Arkansas, last December. It permits simultaneous telephone and electric service use of the same lines.

Intrastate Toll Rate Cuts

GEORGE H. FLAGG, Oregon public utilities commissioner, last month said at least five western states have started action to obtain lower intrastate telephone rates.

He said public utility commissioners of Oregon, Washington, Idaho, California, and Utah agreed at a recent Seattle meeting to seek the reduction.

FCC Proposed Recording Order Hit

THE Bell telephone system companies asked the Federal Communications Commission last month to give "thorough reconsideration" to an FCC plan which would authorize use of telephone recording devices.

The Dictaphone Corporation promptly declared that the telephone companies' "real objective in opposing these instruments is a desire to gain an absolute monopoly of the rapidly expanding telephone recorder business." The comments were made at oral argument on the commission's proposed decision authorizing the devices in interstate and foreign message toll service.

John S. Quinsenberry, representing the Bell companies, said they "are concerned about infringements such devices might make upon privacy of telephone conversations."

Charles H. Tuttle, attorney for Dictaphone, said "telephone companies have consistently opposed and obstructed recorders made by manufacturers other than themselves," and added:

> They have maneuvered to secure certain objectives of their own—one of which is the monopoly of devices for listening in and recording. In fact, this matter was initiated before the FCC by the Navy Department, which claimed telephone companies were unfairly prohibiting their use of telephone recorders.

In its proposed reports, the commission said "adequate notice of the use of a recording device will be given by the use of an automatic warning device which will automatically produce a distinct signal at regular intervals during the telephone conversation."

The commission proposed to declare unlawful any tariff regulations now on file with it which bar use of recorders.

More Interest on AT&T Bonds

DIRECTORS of the American Telephone and Telegraph Company recently increased the interest rate on a proposed issue of new debentures to 2¾ per cent from the 2 per cent originally decided upon.

Directors took the action just prior to convening of a stockholders' meeting called to vote on proposals to issue not more than $351,000,000 of new debentures and to increase the authorized capital stock from 25,000,000 to 35,000,000

shares. Stockholders approved the proposals.

While the board did not elaborate on its decision to increase the interest rate, it was taken in financial circles to mean recognition of the recent firming tendencies in interest rates on all types of new securities.

Telegraph Strike Stayed

A STRIKE of 7,000 Western Union telegraph workers in New York city, scheduled for 12:01 AM October 31st, was averted four hours before the deadline through the efforts of a special committee appointed by Deputy Mayor Thomas L. J. Corcoran.

The strike, which would have been the second this year, would have disrupted United Nations communications, isolated the city from telegraphic contact with the rest of the country, except on an emergency basis, and reduced the volume of overseas radio and cable messages.

Settlement of the wage dispute between the company and the American Communications Association, CIO, came at the close of a 7-hour meeting in the offices of former Supreme Court Justice Isidor Wasservogel, chairman of the special committee. Mr. Corcoran and Edward C. Maguire, director of the city labor relations division, were present when the announcement was made.

Under the agreement, which was ratified unanimously by 1,500 union members at a meeting at the Hotel Diplomat immediately after the mediation session, peace in the local telegraph industry was assured until April 1st.

The agreement provides for putting into effect immediately the recommendations of a Federal fact-finding board for a wage increase of 12½ cents an hour for nonmessengers and 10 cents an hour for messengers. An additional amount averaging 4 cents an hour is to be distributed among 2,000 workers who did not receive an increase under a National War Labor Board directive last December.

The increases ordered by the Federal fact-finding board are retroactive to June 2nd. The union and the company agreed to make joint application to the Wage Stabilization Board for approval of the increases authorized by the fact finders, with the proviso that the agreement was to be void if not approved.

The agreement also provided a night differential of 10 per cent and 20 other concessions involving compensation, job security, promotions, and protection against mechanization. The union dropped, however, its demand for immediate negotiations for a general wage increase on top of the increase recommended by the fact-finding board.

THE special committee, which consisted of Mr. Wasservogel, R. E. Gillmor, vice president of the Sperry Corporation, and Joseph Curran, president of the National Maritime Union, CIO, was appointed October 23rd, after Federal conciliation efforts had collapsed.

Joseph P. Selly, union president, told the Western Union workers at the Hotel Diplomat meeting that the company estimated the cost of the increases proposed by the Federal fact finders at $3,500,000 a year and the additional fringe adjustments agreed upon at $500,000 more. He said the concessions made by the company represented "gains which, while they were not everything we would have liked, were the best that could be negotiated under the circumstances and were very substantial."

Representative Lea Attacked

PRESIDENT William Green of the American Federation of Labor last month denounced Representative Lea (Democrat, California) for sponsoring the "anti-Petrillo" Bill and called for his defeat in November. This was an amendment to the Communications Act of 1934.

Green said the "anti-Petrillo" or Lea Bill, which was passed by Congress and aimed at the activities of James C. Petrillo, president of the AFL musicians' union, was "an attack on the entire membership of the American Federation of Labor."

Financial News and Comment

By OWEN ELY

Fair Return Set at 6-6½ Per Cent By Most State Commissions

INSTITUTIONAL UTILITY SERVICE, INC., recently conducted a survey of the opinion of state regulatory bodies on the fair rate of return to be allowed in the regulation of rates. The consensus indicated that a return of 6 per cent-6½ per cent was considered reasonable, with the trend toward the lower figure for electric companies and the higher for gas companies. The poll indicated that most commissions were willing to reward management efficiency by allowing a more liberal return.

Answers to the questionnaire reflected a continued trend toward the use of prudent investment and original cost, in utility valuation, even in some cases where state laws require the use of current value as the rate base. This trend would appear due to several factors: (1) the strong pressure brought to bear on the local commissions by the Federal Power Commission, the Securities and Exchange Commission, and National Association of Railroad and Utilities Commissioners; (2) the long delays which frequently resulted in the past from the use of fair value, involving engineering appraisals and estimates of cost of reproduction new; and (3) the fact that current reproduction costs would be extremely high and would doubtless permit many rate increases, whereas present high costs are recognized as (partially at least) a temporary phenomenon.

Unfortunately, however, some of the commissions have pushed the original cost idea to extremes, depriving utility investors of part of their investment by forced write offs or amortization. Adoption of the new method has raised many new problems, particularly as to the fair treatment of depreciation reserves, which still remain to be clarified. In view of the present confusion in regulatory circles, it would seem important for state legislatures to reëxamine their statutes and give the commissions more definite directives in order to safeguard the rights of investors in utility properties, thereby offsetting the unfavorable influence of the Federal commissions with their New Deal-inspired philosophies.

A disappointing development was the lack of interest by state commissions (as shown in the poll) in rate adjustment plans such as the Washington Plan of Potomac Electric Power Company or the Rate Adjustment Plan of New Jersey Power & Light Company. Possibly the latter plan has proved too complicated and cumbersome for adoption.

Wall Street Analyses of Utility Securities

LAWRENCE C. COOPER of Goodbody & Co. prepared a series of reviews of holding company preferred and common stocks. Preferred stocks discussed included those of American & Foreign Power, American Power & Light, Cities Service, Commonwealth & Southern, Consolidated Electric & Gas, Electric Power & Light, International Hydro-Electric, King's County Lighting, Long Island Lighting, New England Power Association, Niagara Hudson Power, and Standard Gas & Electric. Common stocks reviewed were American Gas & Electric, American Light & Traction, Columbia Gas & Electric, Middle West,

North American, Public Service of New Jersey, United Gas Improvement, United Light & Railways.

Mr. Cooper thinks that the "comparatively low price" of American Gas & Electric may be due to pending public distribution of the 19 per cent block of stock held by Electric Bond and Share. He sees a work-out value of 26 to 30 for American Light & Traction, plus any special values which might develop when the new gas pipe line is constructed. He considers Columbia Gas an interesting semi-investment, selling at only 8 times *pro forma* earnings and with a possible dividend increase in the offing. Middle West is difficult to evaluate because of subholding company complications but Mr. Cooper values it at around 30. North American he considers a "quality" issue, with a work-out value of 35-40.

He foresees normal earnings after recapitalization of $2.50 a share for Public Service of New Jersey, indicating good possibilities for a dividend increase. United Gas Improvement he considers has special appeal for Pennsylvania investors, who can benefit from special tax savings on the issue. Eventually the company's substantial cash balances will accrue to the benefit of the common stock. United Light & Railways was selling at only about 8 times the indicated earning power of $2.50-$3.

IRA HAUPT & Co. discussed the "relative leverage of holding company equities" in its recent investment letter. The dollar amount of senior securities per share of common stock is estimated at $82 for American Power & Light, $46 for Electric Power & Light, $21 for Engineers Public Service, $19 for American Water Works, $9 for Niagara Hudson, and $6 for Commonwealth & Southern.

Figuring the leverage in another way, Haupt & Co. calculates *pro forma* 1946 earnings and shows the ratio of these earnings to the recent prices of the stocks. American Power & Light is earning $8, it estimates, or 62 per cent of the market price; Commonwealth 90 cents or 26 per cent; Electric Power & Light $5.20 or 34 per cent; Water Works $3.50 or 23 per cent; Engineers Public Service $3.90 or 16 per cent; and Niagara Hudson $1.56 or 17 per cent. This firm prepared a memorandum on Birmingham Electric.

Hirsch & Co. has released an analysis of Consolidated Edison Company, ascribing its backward showing to the relatively high operating ratio of 84 per cent. However, Consolidated Edison's expenditures for maintenance in 1945 were sharply higher than those of Commonwealth Edison, Cincinnati Gas, Pacific Gas, Philadelphia Electric, and Southern California Edison.

Edison is also hurt by the relatively heavy burden of local taxes which in 1945 amounted to 16 per cent of gross revenues, compared with 4 per cent for Philadelphia Electric, 7.5 per cent for Cincinnati Gas, and 11.5 per cent for Commonwealth Edison. Edison's wage costs are high and it is handicapped by the severe traffic congestion in New York city, which requires all its facilities to be placed underground. These factors tend to explain why Edison's residential rates seem relatively high. (Another factor not mentioned is the difficulty of promoting appliance sales and residential usage through rate concessions in a city of apartment houses.)

MERRILL LYNCH, PIERCE, FENNER & BEANE has issued 1946 editions of its printed 4-page descriptions of United Corporation, Cities Service, Commonwealth Edison, Commonwealth & Southern, Consolidated Edison, Detroit Edison, and American Water Works.

Eastman, Dillon & Co. has prepared a 6-page memorandum on Commonwealth & Southern. The stock, now around 4, was then selling at 3. Harold Young, utility analyst, states "even if we appraise operating company shares at the conservative levels of 10 times earnings, the earning capacity currently being developed will make the recent price appear reasonable, while any substantial improvement in the price-earnings ratio for operating company stocks would suggest interesting potentialities of profit."

W. T. Hyde, Jr., in Josephthal & Co.'s monthly review for October, discussed

American & Foreign Power, American Power & Light, Federal Light & Traction, and Public Service of New Jersey.

L. F. Rothschild & Co. has issued an 8-page printed memorandum on Columbia Gas & Electric. The firm points out that the company now has a conservative capital structure, stable earnings, and a good competitive position and that it has substantially complied with the Holding Company Act. The stock was selling below its book value, and *pro forma* earnings appear to justify higher dividends.

E. W. Clucas & Co. has prepared a memorandum on Standard Gas & Electric, assigning Philadelphia Company (the most important system asset) a value of about $24 a share as compared with the current price of 12.

White, Weld & Co. has issued a lengthy brochure on Middle West Corporation in which they estimate the break-up value (depending upon market conditions) at from $19.32 to $37.15.

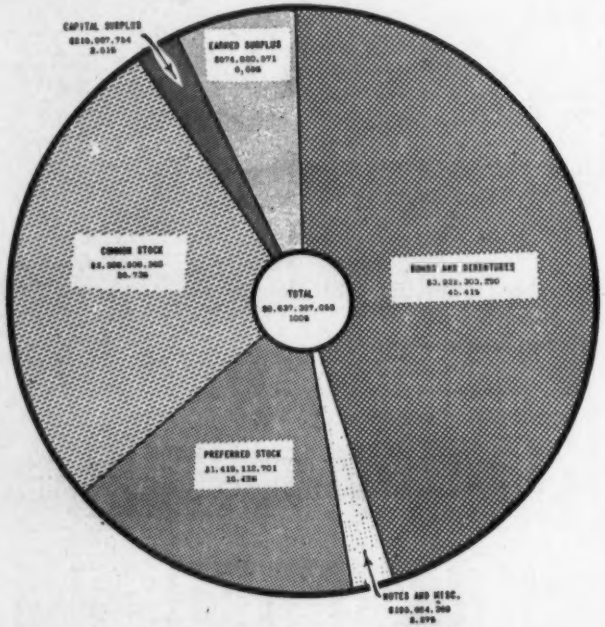
ELECTRIC-GAS HOLDING COMPANY STOCKS

	Where Traded	11-1-46 Price About	Share Earn.* 12 Mos.	Amt.	Price Earn. Ratio*	Indic. Div. Rate	Yield About
Amer. & For. Pwr. 2nd pfd.	S	25	June	$1.76	14.2	..	..
American Gas & Electric	C	40	Aug.	3.29	12.2	$2.00	5.0%
American Gas & Power	O	7	..	..	..	..	..
American Lt. & Traction	C	22	June	1.66	13.3	1.20	5.5
American Power & Light	S	14	Aug.	5.25	2.7	..	..
American Water Works	S	16	June	1.40(j)	11.4	..	..
Central & So. West Util.	C	8	Dec.	1.19(g)	6.7	..	..
Cities Service	C	26	Dec.	3.12	12.2	..	..
Columbia Gas & Electric	S	10	June	1.12	9.0	.30(c)	3.0
Commonwealth & Southern	S	4	Sept.	.55	7.3	..	..
Consol. Elec. & Gas pfd. (l)	O	75	June	15.93	4.7	..	..
Electric Bond and Share	C	17	Sept.	D.22(a)	..	..	..
Electric Power & Light	S	17	Aug.	3.02	5.6	..	..
Engineers Public Service	S	27	Aug.	2.95	9.2	..	..
Federal Lt. & Traction	S	22	June	1.31	16.8	1.00(b)	4.6
General Public Utilities	S	16	..	(k)	..	1.00	6.3
Inter. Hydro-Elec. "A"	S	9	..	..	..	..	..
Long Island Lighting	C	1¼	Sept.	D.06	..	..	..
Middle West	C	19	Dec.	.71(a)	26.8	.50	2.6
National Power & Light	S	2	..	(h)	..	..	..
New England G&E pfd. (l)	O	82	June	11.95	6.8	..	..
New England Power Asso.	C	8	June	1.66	4.8	..	..
New England Public Service	O	6	Dec.	D1.33(a)	..	..	..
Niagara Hudson Power	C	10	Sept.	1.18	8.5	..	..
North American	S	27	June	2.24	12.0	(d)	(d)
North American Lt. & Power	C	7	..	..	..	..	..
Northern New England	O	7	..	..	..	..	..
Ogden	C	3	..	(h)	..	(e)	..
Philadelphia	C	12	June	.61	19.7	.50	4.2
Public Service of N.J.	S	20	Sept.	2.23(g)	9.0	1.00	5.0
Standard Gas & Elec. $7 pfd.	S	93	June	10.44	8.9	..	..
United pfd.	S	47	Dec.	3.67	12.8	(i)	..
United Gas Improvement	S	22	June	1.06	20.8	.65	3.0
United Lt. & Railways	C	25	June	3.04	8.2	1.00	4.0

* Share earnings and price-earnings ratios in some cases must be considered in relation to preferred arrears, pending recapitalization plans, etc. (a) Parent company basis. (b) Year-end extra possible. (c) Payments irregular. (d) One per cent quarterly in Pacific Gas and Electic common stock, worth at market price $1.77. On the latter basis the yield is 6.7 per cent. (e) Liquidating dividend of $3 paid in 1945. (f) In six months ended June 30, 1946, $1.51 was earned. (g) Estimated. (h) Liquidation largely completed. (i) Company paid $7.50 on August 14th, clearing up arrears. (j) Before special tax adjustments. (k) For six months ended June 30, 1946, 80 cents was reported. (l) Common stock not outstanding in hands of public. D—Deficit. S—Stock Exchange. C—Curb. O—Over counter.

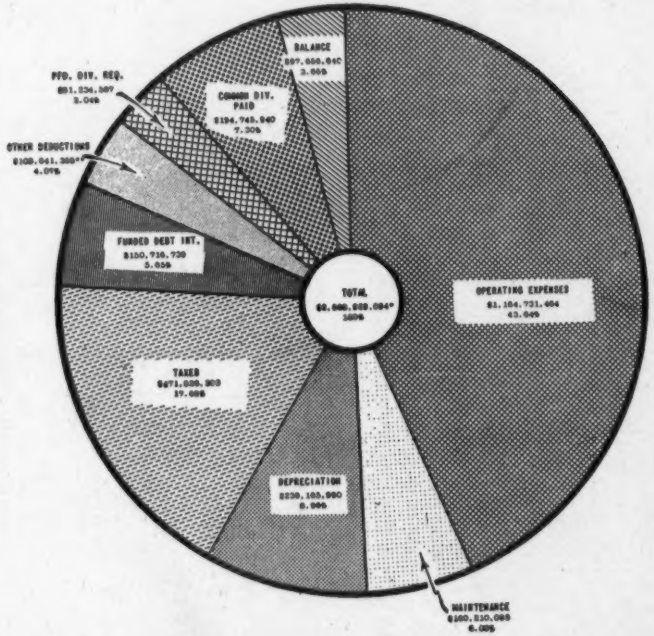
CAPITALIZATION OUTSTANDING

COMBINED SECURITIES OF 180 OPERATING UTILITY COMPANIES
As of December 31, 1945



DISTRIBUTION OF GROSS REVENUES

COMBINED EARNINGS OF 180 OPERATING UTILITY COMPANIES
For year 1945



* Including "other income" of $15,338,824.

** Includes "special charge to income equivalent to the reduction in Federal taxes resulting from refinancing and bond redemption, $47,608,664; from accelerated amortization of war plant facilities, $9,075,084; from other extraordinary tax deductions, $15,850,762; also amortization of plant acquisition adjustments, $10,069,004; and other extraordinary deductions, $3,599,994.

From SEC Report of Holding Company Statistics.

What Others Think

Nationalization of Industry *versus* Private Enterprise

At the seventy-second annual convention of the American Bankers Association, held in Chicago in September, Fred I. Kent, a director of the Bankers Trust Company, New York, read a paper before the savings division on the "Nationalization of Industry *versus* Private Enterprise."

The thoughtful and searching presentation of the subject indicated intensive study and a broad knowledge of this question, which has so important a bearing upon the welfare of the people of this country. Mr. Kent has spent a lifetime upon economic and financial affairs, both on the national and international scene.

Introducing his remarks by reminding his audience that every normal person can produce more than he requires for consumption, if given the opportunity, Mr. Kent observed that some three hundred years ago there were certain areas in Massachusetts and Virginia where property rights were not recognized—no incentive existed to induce anyone to produce more than he consumed. Life, he said, was a mere existence, and progress toward better living did not prevail.

The whole picture was immediately changed, however, when property rights were established in those areas. There was great incentive to produce, he continued, as surpluses could be saved and utilized to better the conditions of living and increase contentment and happiness. The mental inertia of the people was replaced by constructive activity, and all benefited, even the ne'er-do-well.

It was the Constitution and the Bill of Rights, the speaker stated, which put into form the principle upon which the American people were to build their nation. And, he added:

> . . . Freedom of enterprise now grew in leaps and bounds, and the amazing picture of a prosperous nation was placed before the world by the developments of the United States of America. A few references only are needed to show what a people living under the freedoms thus established can accomplish toward building an effective national life.
>
> Of our 130-odd million people, 71,000,000 hold life insurance policies. There are 50,400,000 savings depositors and 15,000,000 people who hold shares of stock. All of these interests arose from savings made by the people that directly and indirectly have built up our great banks, businesses, and industries.

Referring then to other things which help to tell the story of what the American people have built for themselves, Mr. Kent cited these half-dozen items which have added to the comfort and convenience of family life (the figures, he noted, are from reports which are issued by the National Industrial Conference Board):

> . . . In 1900, 1,250,000 families in the United States had telephones. In 1945-46, there were 27,867,000 families which had telephones. Continuing to speak strictly from the standpoint of families in the make-up of our people, 8,000,000 had automobiles in 1900 and 25,600,000 in 1945-46. Of radios, in 1922, 60,000 families had them and at present 30,500,000, nearly one-fourth of the population of the United States. In 1926, 4,000,000 families had vacuum cleaners; in 1946, 18,700,000. In 1926, 2,900,000 families had electric washing machines and in 1946, 17,217,000. In 1927, 66,000 families had electric refrigerators; in 1946, 19,720,000.
>
> In 1923 the average radio cost $200; in 1939, $35. In 1923 the cost of an automobile was $2,100 that in 1939 could be had for $800. Refrigerators which cost $260 in 1923 were $150 in 1939.

Directing attention to the fact that our forefathers, guided by the lessons of history, drew up the Constitution of the United States and the Bill of Rights so

that our processes of government were set up to assure that there would be checks upon those entrusted with the welfare of the people, Mr. Kent pointed out that

> As long as the people insisted upon our government living up to the Constitution, they were afforded the greatest protection from governmental abuses that has ever been devised. This is more clearly seen when we apply it to what has happened in this country since 1933. The tremendous deterioration of sound government processes that has prevailed since that time can be definitely traced to the moment when Congress abandoned its responsibilities in large part as the legislative power of the country to the executive branch of the government, which further resulted in destroying the independence of the judicial arm of the government.

MR. KENT then set down a number of points presenting a comparison of some of the conditions that follow production under nationalization and under private enterprise. Below is given the substance of some of the principal points listed by Mr. Kent:

1. *Competition.* Since this does not exist under nationalization, there is no incentive to produce goods that are better or cheaper, that meet buyers desires, or afford new styles. Under private enterprise, competition makes for cheaper processes and greater production and improves serviceability.

2. *Deficits in production.* Where these occur under nationalization, taxpayers must help pay the cost whether they are buyers of the particular goods or not. Under private enterprise all citizens have the option to decide whether to buy certain goods or not, regardless of the business success of producers.

3. *Management efficiency* is not required under nationalization; incompetent people can remain on the job as there are no stockholders to force a change. Under private enterprise, management, if incompetent, is put out. Stockholders want results.

4. *Opportunity for advancement* is lacking under nationalization—initiative is discouraged. Under private enterprise workers can advance to higher positions as their ability and the progress of the business make possible.

5. *Collective bargaining* and the right to strike are denied labor under nationalization, while under private enterprise they are recognized.

6. *Profit incentive* is missing under nationalization; pride of possession and sharing in building a prosperous community out of savings do not exist. Under private enterprise the incentive for profit helps build the nation through increased income; savings of individuals contribute to churches, educational institutions, homes, and means of culture.

7. *Regimentation* is inevitable under nationalization; man-power production falls and the standard of living goes down with it. Under private enterprise freedom of the people, right to worship as they will, to build their lives as they choose, all under regulations of government, are possible.

8. *Right of protest* against government abuses is lost to the people where there is extended nationalization of banking and industry. Under private enterprise stockholders and consumer public are free to protest and both can appeal to government in case rights are abused.

9. *Interest-free capital funds* are used under nationalization. Under private enterprise capital must be paid for either by dividends or interest.

10. *Unfair competition* for industry results from even partial nationalization, for government is then using capital without cost while private industry has to pay for its capital.

11. *Taxes are lost* under nationalization which municipalities, counties, and states would otherwise be paid by private enterprise.

AS a corollary to the picture thus presented, the speaker remarked upon a basic factor in this comparison of nationalization and private enterprise. He said:

> Even the smartest among all the people have not and cannot have the full intelligence

which lies within the tremendous variation of mental activities that lie within the multitude. It is only under free enterprise and government regulation that the individuality of the people can function, and unless it does function, the greatest good for all cannot exist. Retrogression will displace progression. Peace will be impossible.

While this one factor, judging by the records of history, may seem to be axiomatic, yet, in view of the frequency with which it is overlooked by the advocates of nationalization, the reference to it by Mr. Kent is a reminder that it needs constant reiteration.

Declaring that "in so far as humanity has progressed up to the present, the American way has proved to be the most effective for bringing men out from under conditions of mediocrity or actual hardship." Mr. Kent devoted the balance of his paper to summing up the various rights enjoyed by the individual under the Constitution and Bill of Rights, from which the American way functions.

These rights, he pointed out, cover a wide field and provide the opportunities to each person, through his activities as a producer beyond his own needs, to save something from his daily work. He can exchange his savings for the production that arises from the savings of others and so broaden the lives of all. He can use such savings to provide for his protection through insurance, and by making them serve to add to employment, further production, and increase his income. His savings may be small, but joined with savings of others, they can accomplish wonderful things.

Then followed an outline, item by item, of the many and varied interests in all the phases of the daily life of an American—each one of which stems from the fundamental premise set forth on "production and savings."

ONE is impressed, in reading these searching comments, that the subject matter of Mr. Kent's address, and especially this final summary and analysis of the American way, should be of very real value to directors of personnel. The excerpts selected indicate, it is believed, that the approach to the subject is both original and sound. The basic facts, as presented in the complete address, provide a wealth of educational material. Copies of this address by Fred I. Kent may be had upon request to the American Bankers Association, 22 East Fortieth street, New York, New York.

—R. S. C.

Golden Anniversary Meeting of the Pennsylvania Water Works Association

AMONG the papers presented at the fiftieth annual — golden anniversary — meeting of the Pennsylvania Water Works Association, held in Atlantic City the middle of October, were two touching on economics and one on labor-management relations. As these are subjects definitely confronting Americans in these postwar days, and as the views expressed in these papers reflect upon matters of moment to those concerned with the management of public utility companies, reference is made below to certain of the salient features of these addresses.

Dr. Harold G. Moulton, president of the Brookings Institution, Washington, D. C., speaking upon "The Free Enterprise System," called for development of a sound economic program to replace the nation's present "hybrid system of half-free and half-controlled economy." He said that the basic economic objectives of the American people "are extremely difficult to attain and preserve . . . under a hybrid economic system. Since the hybrid economy—half free, half controlled —has existed only since 1933, we do not have a period of comparable duration by which to test its performance. But the record to date has been far from reassuring." He continued:

There are two reasons why it is extremely difficult to attain and preserve economic stability and full employment under a hybrid economic system. The first is that government policies increase the uncertainties and hazards of private enterprise, particularly with reference to long-term capital commitments.

The second factor which makes a hybrid system difficult to operate is the inevitable confusion and conflict to be found within the government program itself. I say inevitable because—except under an enduring dictatorship—a government's economic policy is inescapably a mere composite of the policies of past and present administrations, and of compromises resulting from the power and influence of the many special interest groups who strive perpetually for government favor or protection.

DR. MOULTON then listed what he believes to be the primary goals of the American people and social system as follows:

1. A progressively larger total national income.
2. A progressively wider division of national income.
3. A society in which individual rewards are based primarily on work performed.
4. Increasing economic security.
5. The greatest possible development of the capacities of every individual.
6. Opportunity for every capable individual to earn his own income.

After analyzing in some detail each of these suggested goals, in an endeavor to cast light upon the prevailing confusion with respect to private enterprise *versus* the various types of planned economy, Dr. Moulton remarked:

. . . it seems clear that if we could move steadily in the directions indicated, we would be enjoying well-rounded economic progress and moving toward the larger goal of economic democracy. On the other hand, to the extent that we lose sight of these goals or adopt policies which prevent their attainment, we are failing to achieve our national objectives.

A clear and precise perception of our national economic aims is the essential first step in the formulation of a national economic program. The goals provide standards or criteria by which to measure the soundness of national economic policies and also the methods employed in carrying them into effect. But before we begin the discussion of national policies we must pause to survey in broad outlines the sources of our economic growth over the past century. The lessons to be drawn from this experience should also be useful in helping us formulate a sound economic program—public and private—designed to realize these goals.

Alan H. Temple, vice president and economist of The National City Bank of New York, speaking on "Private Waterworks and Inflation," declared that the country must be approaching the peak of the inflationary phase of the business cycle but there is not necessity or likelihood of "extensive disastrous deflation."

To support his opinion that the crest of the inflation spiral is drawing near, Mr. Temple said that several facts can be adduced. Among them he cited the following:

. . . One is that in many trades the distribution pipe lines are unquestionably being filled, and the volume of goods becoming available to consumers is increasing.

Second, our farms this year have yielded the blessing of abundant cereal crops, and these ample feed supplies lay the foundation for a coming increase in the output of livestock products. Most authorities think that farm prices in general are about at their peak.

A third fact is that in some lines high costs are having their usual effect of cutting off demand. They have caused the paring down and postponement of a good deal of industrial expenditure, and they have driven a good many customers out of the housing market.

My fourth point is that the deadline in stock prices has induced a certain amount of sobriety. Concern is expressed as to the unbalance of inventories and the size of outstanding forward commitments for merchandise. In a good many quarters, reëxamination of buying policy is taking place.

IT is fortunate, the speaker continued, that awareness of our inflated position has spread and that people have started asking questions about it at a time when there are still powerful supporting elements beneath the business structure. He further commented:

These supporting elements are the unsatisfied demands for goods both at home and abroad. The need for residential building can be projected far into the future. Automobile production has not yet caught up with the current rate of scrapping. The whole world wants American goods and most of our important customers can pay for them.

"OKAY, RIGHT HERE, MISTER—SHOW US AGAIN HOW YOU WERE SOUTH PACIFIC FOX-HOLE DIGGER CHAMPION"

With these elements of strength the situation can stand some weakening of demand. It can stand a fall in black market prices and others that have been inflated beyond reason. It can stand the kind of recession that might lead to better quality goods and services.

Business, through current policies, should not contribute to inflation, Mr. Temple said, and added that emphasis should be on economy, saving, and debt retirement. The squeeze of costs against prices will become no easier, he believed, since in many cases the possibility of absorbing further cost increases through higher physical volume is past. In closing he observed that

There is a maxim that "hard times make hard work." Some people are amending this to read "only hard times make hard work," and predicting depression accordingly. The objective of all should be to prove them wrong.

Dr. E. Wight Bakke, director of the labor and management center, Yale University, speaking upon "Promoting Labor Peace," declared that mutual survival is the major common objective of labor and management. The root of most of the difficulties between the two groups, he remarked, is a lack of understanding of the full range of problems faced by the other.

Defining peace in industrial relations as a state of antagonistic coöperation, in which parties with different interests recognize their mutual dependence, Dr. Bakke commented:

. . . two such giants as organized labor and organized management cannot thresh

around in a struggle for dominance within the delicate mechanism of the American economy and American democracy without bringing the whole structure down upon the heads of all of us. If they do that the public demand for regimentation of both in order to avoid the prospective chaos will be unresistable.

Such a demand will threaten the survival of free unions, and free management alike, and will herald the destruction of free enterprise and a free society.

A NOTEWORTHY feature of this address is that the views expressed by Dr. Bakke were based upon the direct expressions of labor and management leaders. The doctor told his audience that the Yale Labor and Management Center had issued a report called "Mutual Survival, the Goal of Unions and Management." That report is based, he said, on interviews with sixty leaders of labor and sixty leaders of management in nine major industrial cities. Therefore, he observed, the convictions about sound management and effective unionism to which he called attention were theirs, not his.

In summarizing these different convictions, the speaker asserted that

> The first major difference between management and unions arises from a focus of interest. Management's focus is on the welfare of a particular company. The union's focus is on the welfare of the employees of many companies. The immediate achievement for which any management is rewarded is the economic success, not of the world, the nation, or the industry, but of a particular firm. . . .
>
> Management's *basic* interest is vertical. The union leaders' *basic* interest is horizontal. Both have to govern their actions accordingly in order to survive. Management has to insist on examining every proposal made by the union primarily from the point of view of its effect on the profitability of the particular company. Unions have to chart their course by reference to a more generalized test: Where will this course lead us in our attempt to raise the standards of workers throughout our jurisdiction and to increase the power of our organization as an instrument for doing that?
>
> The hope for labor peace lies in the fact that the basic interest for each is an important secondary interest for the other, and that this secondary interest can be neglected at their peril.

The second basic conflict, it was stated, arises from the following:

> . . . good management involves a large degree of freedom and discretion while good unionism involves regulation of management and workers. Management functions consist not only in planning a course of action, but in manipulating factors of production, including labor, whose character and relationship over time cannot be precisely predicted. All sorts of unexpected and unpredictable situations arise. They must be met on the spot. The man or men responsible for that job have to have a considerable amount of free play in the rope. They are impatient with regulations which tighten the rope.
>
> A union is, however, basically an employer-regulating device. It seeks to apply rules to his action, as one union leader said, wherever that action affects the welfare of the men. Such action covers a broad area. Is there a single managerial action which is outside of it? The necessity for management freedom arising from the very nature of its job runs head on into the necessity for union regulation of management arising from the very nature of its job.

IT is probably natural, Dr. Bakke pointed out, that in the initial stages of this conflict each party should challenge the other with the slogans of "management prerogatives" and "union rights." But, he continued:

> . . . labor peace will not be promoted by a battle of slogans. The first job to be done requires each party to study the job of the other. What kind of functions can be shared, what kind have to be shared in order to deal with all the relevant facts, what kind can best be done by specialists trained for their craft? In the last case how can these functions be carried out without curtailing the efficiency of the other party? It will be well for both management and labor leaders to realize that they cannot accomplish even their individual objectives unaided. Once a union is geared into the enterprise, a weak management handicaps a union, and a weak union handicaps management. If either party expects the other to act so that his own position and efficiency are improved, it is only common sense to grant the other the same privilege and act accordingly.

The third conflict between management and unions arises, it was said, from the necessity on the part of each to develop a loyalty among workers to the firm on the one hand and to the union on the other. It was noted:

> . . . As long as the objectives of the two teams bring them into competition, it is hard for the leader of either one to believe that a man

can at the same time be a member of both. The conviction is increased when either leader attempts to develop loyalty and solidarity by destroying confidence of workers in the other. There is no point in dodging the fact that both management and unions have to develop loyalty among workers in order to function at all. The most ancient of techniques for developing loyalty is to convince men of the necessity of uniting against an opponent who is a threat to their interests.

Moreover we are not far removed from an era of civil warfare in which unions and management were at each other's throats. Competition for loyalty was inevitable. But it does not promote labor peace.

It will continue, however, to the degree that unions and management are doing different jobs that bring them into competition. One would expect it to decrease to the degree that unions become interested in and are admitted to genuine participation in increasing productivity—that is, to the degree that unions and management become partners in doing the same job—for loyalty is a by-product of participation.

THEN the final point made by Dr. Bakke was that management and unions govern their actions by reference to different codes. The code of each is geared, he remarked, to the kind of an organization it is, to the job each has to do. He amplified this by the following:

> . . . The code of management represents the survival of rules which have proved expedient in dealings between manufacturing concerns, banks, insurance companies, shipping companies, dealers, and similar organizations. The people involved in such organizations are engaged primarily in making and exchanging commodities for economic gain. They are held together by the processes of hiring and firing, by the giving and withholding of economic rewards. They are organized on the basis of a hierarchy of authority which is maintained in large part by the ability to provide or deny access to economically useful things and services. The rules essential to the maintenance of such an organization are business rules. . . .
>
> Employers expect unions to be "business-like." That is the chief meaning of their challenge to be "responsible." What they are saying is: "You should follow the rules of business."
>
> Now to the extent that the union's activity is a business operation, and much of it is just that, the challenge is not an unreasonable one. How can labor peace be built on any other foundation? The question answers itself. Business operations must be conducted according to business rules, as long as the rules are consistent with the public interest.

Dr. Bakke then observed that the process of getting all parties to such operations to act accordingly must take account of several factors. The first is that a code is acceptable only if action in line with it is rewarding. It is rewarding if it enables a party to accomplish his objectives and do his job well.

The business code, he said, is acceptable to managements because, since they work through institutions which have business objectives, and which require them to perform primarily business tasks, the following of business rules is rewarding to them.

DR. BAKKE turned then to what may be the union viewpoint, and in so doing he presented a most interesting analysis of the factors which influence their attitude. Inquiring "how does the matter stand with the union leaders," he commented, "consider briefly these facts about unions." He then cited these facts:

> They are a part of a working-class movement. A movement is not a business. Its members are bound together by traditions of struggle and martyrdom, by sentiments that have no counterpart in the world of business. A movement is not primarily a business. Loyalty to this movement will oftentimes influence union men to act in ways which are anything but businesslike.
>
> They are pressure and power-wielding organizations designed to change the balance of economic rights, whereas a business operates to gain economic advantage within the framework of established rights.
>
> An organization whose success is measured by its ability to change the balance of rights is more revolutionary than conservative in character. Its tactics resemble politics or even warfare as frequently as they resemble business operations.
>
> They are organizations designed to battle for the right to exist and to be ready to counter any move which threatens that existence. How easily the words "struggle," "fight," "battle" fall from the lips of labor leaders! Those are not just words in their vocabulary. They are symbolic of their conception of the nature of their job. They are words made vivid by experience in doing that job. They are definitions of activities that appear to be "common sense," for "common sense" is a mirror of "common experience."

Most important of all, the speaker ob-

served, is the fact that unions are political organizations in their internal structure. He added:

> . . . If management had to get the consent of its stockholders for every major decision it made; if it had to involve them in day-by-day activity to implement those decisions; if stockholders had the power to express their dissatisfaction by withdrawing their capital from the business instead of selling their stock to someone else; under those circumstances management would have to develop the same political strategies with respect to stockholders as union leaders have to develop with respect to union members.
>
> Would not such a situation provide most difficult problems for management in being able to be responsible in the making of binding contracts, and in being able to deliver on those contracts?
>
> There is no short cut to the development of a strong, disciplined, and responsible political organization unless adherence to democratic procedures is abandoned.
>
> . . . But if one wishes to develop relations between unions and management which will promote labor peace, he will do well to recognize the basic nature of the institutions whose relations are involved. They will have to be made to fit together as what they realistically are, not what someone would wish them to be. One thing is certain, neither party can hope that the other will be recreated in his own image.

In concluding his remarks, Dr. Bakke pointed out that labor leaders and management have different jobs to do. They work through different sorts of organizations. He said:

> Their immediate objectives are often not the same. One of their major tasks is to influence the action of the other. They have a large area of common interest, but that area is not large enough at the present time to guarantee labor peace. The area will be decreased if they fight for survival in ways which threaten the survival of the other.
>
> That is why it is so important that each shall know the kind of a job and institution through which the other works, and how his position, traditions, and objectives compel him to act as he does; to know what the other's convictions are about what contributes to and what endangers survival of these; to recognize that these convictions grow out of experience and will change only when that experience changes. Such an understanding is a cornerstone of mutual respect, and mutual respect is essential to peace. Given that, they can use their brains and their powers to create a relationship in which both can survive the process of resolving conflicts between them.

After reading the paper by Dr. Bakke one is left with the impression that the report of the Yale Labor and Management Center, from which he drew the "convictions" he advanced, constitutes a considerable contribution to this subject.

"Just about a month ago Pittsburgh was verging on a general strike. All unions were mobilizing to help the power union.

"Mayor Lawrence had done the unspeakable in labor disputes —he had sought an injunction. Think of it, an injunction in a labor dispute!

"Antilabor! Antiunion!

"Pittsburgh unions mobilized. Injunctions must not be used in labor disputes! The rights of labor must be protected."

* * *

"Time marches on . . .

"The AFL and CIO get into a knock-down-and-drag-out over controlling (and collecting the dues) of the brewery workers.

"The AFL sought an injunction to keep the beer distributors from serving that 'scab' (CIO) beer.

"And Judge A. Marshall Thompson denied it.

"Think of it! A judge refusing an injunction in a labor dispute. Dirty, antiunion tactics!"

—Editorial Statement,
Pittsburgh Press.

The March of Events

In General

Coffin Award Reinstated

THE Charles A. Coffin award, best known and most coveted distinction open to all operating companies in the electric light and power industry, has been reinstated, after a wartime suspension, according to the Edison Electric Institute, which administers the award.

The award was established twenty-five years ago by the Charles A. Coffin Foundation to suitably recognize and honor nationally an electric company which during the year preceding had achieved the greatest advancement in its operations and physical plant, and thus made a distinguished contribution to the development of electric light and power, for the convenience of the public and the benefit of the industry.

Since its establishment, 18 companies have received the award. No awards were made for the years 1931-1932, nor during the war years 1942, 1943, 1945. As a tribute to the magnificent contribution of the electric industry to the war effort, the award for 1944 was collectively bestowed on the entire industry.

Prerequisite for consideration for the award, which is made on a competitive basis, is the submission to the Charles A. Coffin Award Committee of a brief and simple presentation of the significant accomplishments which in the view of the company entitles it to consideration for the award.

Immediate Start on Georgia Project Proposed

PRIVATE capital can start at once construction of the proposed $45,000,000 Clark Hill hydroelectric project on the Savannah river, whereas government work in the near future appears doubtful in view of President Truman's curtailment of river and flood-control projects, a Federal Power Commission hearing was told in Atlanta last month.

The hearing was on an application of the Savannah River Electric Company, a subsidiary of the Commonwealth & Southern Corporation, with which the Georgia Power Company also is affiliated, for a license to develop the project.

Willard W. Gatchell, principal attorney for the FPC, asserted that the application was the first instance of a private concern desiring to undertake a project proposed for Federal development. Initial jurisdiction was not in question in the hearing, however, he said. Rather the application was to be accepted or rejected under a section of the Federal Power Act which provides that the FPC must not issue a license for a project which the commission believes the government should construct.

Attorneys for the electric company asserted the government is "not supposed to be in the power business," and Harllee Branch, Jr., speaking for the applicants, declared the company "cannot sit still in the face of the tremendous demand for electricity already existing in its territory, and in the face of a constantly increasing demand which will take place as the area develops in the coming years."

Colonel Paschal N. Strong, Army district engineer at Savannah, asserted the Federal government had already spent $1,021,000 on the Clark Hill project and had contract commitments for an additional $991,000.

Colonel Strong testified that $5,500,000 of Federal money had been allotted to the project to date. Construction of an access railroad to the dam site is 42 per cent complete and engineering plans are essentially finished, he added.

Charles A. Collier, vice president of the Georgia Power Company, testifying before the FPC examiner, said the plans of the Savannah River Electric Company for development of Clark Hill are "substantially the same as those of the Army Engineers."

"The flood-control and navigation benefits are identical in both plans," he asserted, "and the application of the Savannah River Company for a permit to build the dam so stated. Our plans will have the same capacity for the generation of electric power and, in addition, we offer the prospect of a better utilization of the generating facilities to be installed at the dam."

Based upon the estimate of $45,000,000 as the total cost of the Clark Hill dam, Collier said that Army Engineers put $1,038,000 as the value of the total benefits from flood control and navigation, or 3½ per cent of the total cost, thus leaving 96½ per cent of total cost charged to electric power.

Questioned about the Santee-Cooper project, a public water-power development in South Carolina, Collier said:

"The Santee-Cooper area has not grown as rapidly in industry as has the area served by the Georgia Power Company. I can say with confidence that no industry has ever failed to locate in our area because of either a deficiency in power capacity or in the rate structure of the Georgia Power Company.

"The rates of the Georgia Power Company are very low, so low that in all our two territories there are only two privately owned and operated generating stations. That is indicative of the low rates of our company. For residential purposes, we now serve 1,960 kilowatt hours per customer per annum, the highest area-wide use per customer east of the Rocky mountains."

James F. Crist, vice president of the South Carolina Power Company, testified his company has recently signed a 10-year contract with the Santee-Cooper Authority to purchase 150,000,000 kilowatt hours of electric power a year. The cost will average about $875,000 per year, he said. He further said that, in his opinion, the Santee-Cooper project is not as efficiently developed as "it could be."

Questioned by FPC lawyers on this statement, Crist explained that Santee-Cooper has no proper facilities for using its secondary or surplus power, and that this lack causes a considerable wastage in water.

Fourteen witnesses were introduced from South Carolina to testify in favor of the application of the private company.

SEC Gets Exchange Proposal

THE Commonwealth & Southern Corporation on October 30th filed with the Securities and Exchange Commission a proposal to exchange 399,997½ shares of the no par value common stock of Southern Indiana Gas & Electric Company, a subsidiary, for 114,285 shares of its own preferred stock, $6 series.

If the commission sanctions the plan as necessary to comply with provisions of the Holding Company Act, an outline of the offer will be mailed to registered holders of the corporation's preferred shares. Those accepting the offer would receive 3½ shares of Southern Indiana for each share of Commonwealth preferred tendered under the proposal, which would remain in effect a minimum of fifteen days.

Deposits made by preferred stockholders would be accepted in the order of receipt and any deposit which would result in exceeding the exchange limit would be subject to appropriate reduction. The applicant also reserved the right to reject all deposits if less than 90,000 shares of its preferred are deposited for exchange.

Application Filed with FPC

THE Federal Power Commission recently received an application from

Montana-Dakota Utilities Company, Minneapolis, Minnesota, requesting authorization to acquire facilities in Montana and North Dakota to be constructed or acquired by Fidelity Gas Company, a wholly owned subsidiary of Montana-Dakota.

Montana-Dakota also has asked FPC for permission to assume a $612,500 instalment note, due 1966, issued by Fidelity Gas Company to the United States of America to cover advances made by the government and to assume the indenture of mortgage securing the note, which indenture is between Fidelity Gas Company and the Marquette National Bank of Minneapolis, as trustee.

Fidelity Gas Company has been inactive for some time but is the designated operator under a unit plan of development in the Bowdoin gas field and holds title to minor amounts of gas acreage. It has made arrangements with the government through the Rural Electrification Administration for construction of the electric transmission lines involved in Montana-Dakota's application. Under the agreement with the government, the lines would be conveyed to Montana-Dakota before energization so that Fidelity Gas will not at any time be engaged in the electric utility business.

Commission Reopens Proceedings

THE Federal Power Commission has reopened the proceedings in which, by its order of May 15, 1942, it determined that the Connecticut Light & Power Company, Hartford, Connecticut, was subject to FPC jurisdiction, and has set oral argument before the commission to begin at 10 AM, November 25th, in Washington, D. C.

The case was remanded to FPC by the court of appeals for the District of Columbia for further proceedings in line with the opinion of the Supreme Court, which reversed the judgment of the court of appeals affirming the commission's order of May 15, 1942. The company, through its counsel, has taken the position that the proceedings should be dismissed, and had asked for an opportunity for oral argument before the full commission.

The controversy dates back to enactment of the Federal Power Act of 1935. At that time the Connecticut Light & Power Company and certain other Connecticut electric utilities cut interstate lines to avoid becoming subject to the new law. Not convinced that the steps taken by the company had removed it from the scope of regulation intended by Congress, the FPC made persistent attempts to secure the company's voluntary compliance. Finally, upon the company's refusal to reclassify its capital accounts, the FPC in January, 1941, initiated formal proceedings to determine its jurisdiction over the company.

Temporary Authorization Granted

THE Federal Power Commission recently granted Panhandle Eastern Pipe Line Company, Kansas City, Missouri, and Chicago, Illinois, temporary authorization to install 8 additional compressor units aggregating 12,200 horsepower in compressor stations along the company's pipe-line system which extends through Texas, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. The company estimated cost of construction at $2,865,000. The facilities were to be completed by May, 1947.

Specifically, the company will add one 1,600-horsepower unit to each of the following compressor stations: Greensburg, Haven, and Olpe in Kansas; Houstonia and Centralia in Missouri; Pleasant Hill in Illinois; Montezuma in Indiana; and one 1,000-horsepower unit at the Louisburg station in Kansas.

The company stated in its application that its present facilities would be taxed to the utmost during both winter and summer months for the supplying of market requirements of its customers and that the compressors requested were needed to supplement the present equipment and to permit maintenance of delivery capacity during repair and overhauling periods.

Arkansas

Mayor Sets Gas Election

A SPECIAL election to determine whether Little Rock will purchase the Arkansas Louisiana Gas Company's distribution lines for municipal operation will be held December 17th, Mayor Sprick said recently.

The mayor promised he would include the election date in his veto message to the city council on November 4th, when the aldermen would decide whether to restore the mayor's authority to call an election.

The resolution disapproved by the mayor divested the waterworks commission of authority to proceed with the purchase, and removed authority of the mayor to set an election date.

Connecticut

Power Industry Leader Retires

RETIREMENT of Samuel Ferguson, at his own request, as president of the Hartford Electric Light Company, and election of Vice President and General Counsel Austin D. Barney to be his successor was announced recently, following a meeting of the board of directors. It was also announced that Mr. Ferguson would continue as chairman of the board.

For many years Mr. Ferguson was not only one of the outstanding figures in the business-managed electric power industry in the New England area, but gained national recognition in regulatory as well as industry circles for his advocacy of progressive management through the acceptance of sound regulatory principles.

Vice President and General Manager Kenneth P. Applegate was promoted to the newly created position of executive vice president.

Mr. Ferguson's service with the company, dating from 1912, has been marked by leadership which has brought him national recognition in the industry and has caused the Hartford Company to be cited many times for its progressive policies.

For the directors, Morgan B. Brainard announced that it was with great regret that the board acceded to Mr. Ferguson's desire to be relieved of the responsibilities of the active conduct of the company's affairs and expressed, in its minutes, the "great admiration, love, and affection we have for him and our appreciation of the tremendous service he has rendered the company."

Since his graduation from Hartford Public High School in 1892, Trinity College in 1896, and Columbia School of Mines in 1899, Mr. Ferguson has followed an engineering, scientific, and business career which has covered a wide range.

Prior to joining the Hartford Company as vice president in 1912, Mr. Ferguson served for twelve years as consulting engineer and research engineer for the General Electric Company at Schenectady, New York, under such scientists as Dr. C. P. Steinmetz and Dr. W. P. Whitney. He brought to the Hartford Company, then in its early stages of development, a knowledge of modern developments in the electric art, and he has seen the company under his management progress to an outstanding position in the electric industry and to a vital place in the everyday life of metropolitan Hartford.

Mr. Ferguson became president in 1924. He is former president of the Association of Edison Illuminating Companies and is a trustee of the Edison Electric Institute, and a member of the American Institute of Electrical Engineers. In 1936, Rensselaer Polytechnic Institute awarded him the honorary degree of Doctor of Engineering in recognition of his contributions to the development of electric power. He is a trustee of Trinity College.

District of Columbia

Gift to "Booster" Fund Valid

THE District of Columbia Public Utilities Commission last month overturned a principle laid down by a predecessor commission many years ago and ruled that the Washington Gas Light Company may assess the cost of its contributions to the Greater National Capital Committee against its consumers.

In effect, the decision means everyone who pays a gas bill in the District will have to pay a part of the contribution to the board of trade committee, a group that is maintained for the purpose of bringing conventions to Washington.

Similar contributions have, since early in the 1930's, been ruled out as operating expenses.

Georgia

Gas Firm Eulogized

THE Atlanta Gas Light Company, the city's oldest business corporation, was dubbed "a symbol of what makes America great" at its ninetieth birthday celebration in Atlanta recently.

Henry A. Alexander, president of the Atlanta Historical Society, host at the birthday party, paid tribute to Atlanta's oldest business citizen by declaring that it always has stood for "permanence, enterprise, well-balanced judgment, integrity, and success."

Born in 1856 when Atlanta was a little community of only 6,000 population, the Atlanta Gas Light Company has grown and progressed with the city because of its ever-present ideal of service, he said.

H. Carl Wolf, managing director of the American Gas Association, added to its service motive that of "profit," which he said is essential to "American business as we know it today."

"Only by a balanced combination of the service and profit concepts," Wolf declared, "can we have American industry as we know it today. Those of us who love American industry must always have our eyes open for those who question the profit motive."

Government must always be the servant of the people, Wolf asserted, but "never the master." For government to be industry, he added, is "gnawing at the very vitals of this country."

Rock G. Taber, president of the Atlanta Gas Light Company, told the story of the birth, growing pains, and "graceful" aging of his company. He recalled that the company was founded to light Atlanta's streets on Christmas Day, 1855. It was incorporated by the Georgia legislature in 1856, he said, and since then it "has progressed with the community, and planned with the community for the growth and expansion that have taken place during the years."

Indiana

Pay Hike Goes into Effect

WAGE increases of 11 cents an hour went into effect recently for about 1,500 AFL employees of the Public Service Company of Indiana, without awaiting approval of the Wage Stabilization Board.

The 11-cent award was made by an arbiter, following negotiations in which a strike of power workers in 70 counties was threatened. The arbiter recommended that the WSB approve the increase.

However, R. A. Gallagher, president of the utility, said:

"All controversy should be immediately eliminated in order to concentrate on the job of serving electricity to the public. Accordingly we are placing the

additional increase of 11 cents an hour in effect, retroactive to June 16, 1946, without referring the matter to the national Wage Stabilization Board."

Nebraska

District Signs to Buy Unit

DIRECTORS of the Omaha Public Power District recently signed a contract to purchase the Nebraska Power Company from the Omaha Electric Committee. The move was one of the final steps in a 7-year movement toward public power in the state's largest city.

The public power district is to take title to the utility properties on December 2nd. There were no objections to the agreement. The agreed price of all Nebraska Power properties is approximately $43,747,530 when Nebraska Power's Iowa properties are sold and net current assets are considered.

The actual cost to the power district will be approximately $37,747,530.

New Jersey

Gas Rate Increases Granted

PUBLIC SERVICE ELECTRIC & GAS COMPANY and two affiliated companies, Atlantic City Gas Company and County Gas Company, have been granted gas rate increases by the state board of public utility commissioners, it was announced recently.

The new rates will go into effect December 1st. They will affect consumers of residential and building, heating, and cooling service.

It is estimated that operating revenues of Public Service Electric & Gas will be raised by $600,300 a year. Atlantic City Gas Company revenues and County Gas Company revenues will be increased by about $23,000 and $3,600 a year, respectively.

The increase in rates is the first for Public Service since 1935. For the two affiliated companies, it is the first since 1936. Rates were raised primarily because of the increase in the cost of production.

Governor Reassures Union

MEMBERS of the International Brotherhood of Electrical Workers, AFL, employed at Public Service Electric & Gas Company plants, were assured last month by Governor Walter E. Edge that the utility concern had not made operating changes to which they objected. He promised intervention of the state mediation board if the dispute could not be settled.

The system council of the union, urging the governor to take over running of the plants to avoid a labor difficulty and possible stoppage of service to consumers, contended that Public Service was arranging to transfer reading of "demand meters" from AFL members to lower-paid employees affiliated with a company union.

The governor wrote to the system council that the company was arranging discussions with the union over the proposed changes. He promised coöperation of state representatives.

New York

Action Raises Strike Issue

THE possibility of a strike of 24,000 Consolidated Edison Company employees on January 1st was raised recently when the Brotherhood of Consolidated Edison Employees, CIO, sent to the

company a formal 60-day notice of the termination of its contract.

Patrick McGrath, chairman of the union's joint council, said the union hoped it would be possible to conclude negotiations for a new contract without any interruption of electric and gas service.

"We will do everything possible not to inconvenience the public," Mr. McGrath said. "We are willing to coöperate with the company in providing essential service for hospitals and other similar institutions. But the employees are determined to receive a fair agreement. Our principal concern at this time is that the employees are not provoked into some precipitous action before the contract ends."

Mr. McGrath said the union would seek wage increases of 30 to 35 cents an hour, elimination of job inequalities between the Edison system and other employers, an increase in night and holiday premiums, improved working conditions, and a job-training program for veterans.

Transit Pay Rise Voted

THE board of transportation of New York city at a brief special meeting on November 4th voted a pay increase to 33,000 transit employees, which will mean 20 cents an hour more to hourly wage employees and $480 to per annum employees.

The increase became effective immediately. But no attempt was made to approve the increase retroactive to July 1st, as recommended by the mayor's transit advisory committee and approved by the board of transportation and the board of estimates. The proposed retroactive increase was contested by a taxpayers' suit on which a hearing was scheduled to be held November 6th in supreme court.

A total of $12,500,000 was involved in the vote, so far as the current 1946-47 budget was concerned. The retroactive increase, if finally approved in court, would add another $6,000,000.

This increase to 33,000 of the city's employees was expected to strengthen the demands that are accumulating from many employee groups for an increase of $600 a year. The city council had previously urged an increase for all employees that averaged above $500. But the city's fiscal officers said there were no funds to meet any such demand, estimated to cost $50,000,000.

South Carolina

Strike Threat Ended

THREAT of a crippling power strike in South Carolina ended recently when D. B. Holland, business manager of the Columbia International Brotherhood of Electrical Workers, signed a "withdrawal of dispute" notice to the national Department of Labor.

Federal Conciliator Fred Beck, Union President M. E. George, and S. C. McMeekin, vice president of the South Carolina Electric & Gas Company, approved.

Actual signing of the 18-month contract, which was being drawn up, would take place early in November, Mr. Beck said. Terms of the contract were not divulged at the time, but were assumed to lie somewhere between the union's last published demand of 13-to-18-cents per hour increase and the 5-to-11-cent increase offered by the company.

Texas

Reject Municipal Plant

VOTERS of Cameron last month rejected a proposed $500,000 bond issue to finance a municipal power plant. Cameron is now served by the Texas Power & Light Company.

The Latest Utility Rulings

Denial of Injunction against Service Interference By Labor Union Affirmed

THE New York Court of Appeals by divided vote affirmed a lower court order denying an injunction to a home owner against a union which, by picketing the only entrance to a building development, had prevented employees of a gas and electric company from establishing service. [See 62 PUR(NS) 245, 248.] The majority opinion followed the lower court in considering the matter as "growing out of or involving a labor dispute" and therefore one in which the court was without jurisdiction to give injunctive relief. This was by virtue of the "anti-injunction" statute § 876-a of the Civil Practice Act. But the minority ruled that the home owner's complaint made out a case in which no labor dispute was involved.

The contention that, as a third party to the controversy between a union and a nonunion builder, a home owner should not be required to suffer without equitable relief was approved by the judges supporting the minority opinion that an injunction or at least damages should be awarded. The majority, however, disposed of this contention summarily with this statement:

> It makes no difference who is the plaintiff. There is no jurisdiction to issue such an injunction on anyone's application. Such are the plain words of the statute, and the obvious intent makes it even plainer. The whole purpose of the "anti-injunction" statute would be neatly and effectively thwarted if such an injunction were available to an outsider, injured or annoyed by the peaceful and lawful picketing. Such a third party can always be found by the disputant who wishes to enjoin his adversary—it was conceded in open court on the argument of this appeal that the attorney who represents this plaintiff-householder is in fact being paid by the strike-bound employer, Levitt. (That circumstance explains why plaintiff continues to seek a reinstatement of the temporary injunction against picketing, even though the picketing has now ceased and the gas and electric installations have in fact now been made.)

The minority judges did not accept the view that the withdrawal of the pickets and commencement of service during the pendency of the appeal made further proceedings unnecessary. They relied on the rule that where the assistance of a court of equity is invoked for injunctive relief and/or damages, and subsequent happenings render the injunction unnecessary, equity should retain jurisdiction and award damages so that its disposition of the controversy will be a complete and final one. *Schivera v. Long Island Lighting Co. et al.*

Authorization of Natural Gas Pipe-line Construction Denied

THE Central New York Power Corporation unsuccessfully applied to the Federal Power Commission for authority to construct and operate certain pipe-line facilities in New York state, or, in the alternative, for a finding that the

applicant was not a "natural gas company" within the meaning of the Natural Gas Act and would not become one upon the construction of the proposed facilities.

The pipe-line construction was intended to interconnect the applicant's Syracuse-Oswego division with its Utica and Watertown divisions to enable it to render straight natural gas in lieu of mixed and manufactured gas. The proposed service would include the sale of straight natural gas to Syracuse Suburban Gas Company and New York Power & Light Corporation for resale for ultimate public consumption for domestic, commercial, and industrial purposes. At present there is in operation no pipe-line connection among the applicant's various divisions.

Central purchases natural gas from New York State Natural Gas Corporation, which transports such gas from producing fields in Pennsylvania. This gas is received by applicant at Therm City, New York, and is transported by pipe line to the applicant's mixing plant at Hiawatha, near Syracuse. This pipe line is tapped at certain points and straight natural gas is supplied to direct industrial customers.

The commission stated that there is no question as to the interstate character of the transportation by New York State Natural Gas Corporation of the natural gas which it delivers to Central at Therm City. This transportation, it said, is merely a continuation of the movement of natural gas in interstate commerce until it reaches the applicant's mixing plant at Hiawatha, and concerning the nature of the transportation, after reaching the mixing plant, the commission ruled:

> The fact that unmixed natural gas is, at a point in transit in interstate commerce, mixed with artificial gas and then further transported for sale for resale does not change the interstate character of the transaction within the meaning of the Natural Gas Act.
>
> Section 2(5) of the Natural Gas Act defines "natural gas" as follows:
>
> "'Natural gas' means either natural gas unmixed, or any mixture of natural and artificial gas."
>
> Section 2(6) defines "natural gas company" to mean:
>
> "... a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

The proposed project was disapproved on the basis of the indefinite status of major elements of the proposed pipe line and questionable need for a new compressor station. The commission found that the project was still in only a formative stage and that the applicant did not meet the burden of proof to establish that public convenience and necessity required the construction and operation of the proposed facility.

It was pointed out that the size of the proposed pipe line and the type of construction had not been definitely determined, that the original estimate of the cost of the proposed facility was declared by company witnesses to be "a very rough estimate," and that the originally estimated amount of gas to be purchased from the New York Natural Gas Corporation and the cost of conversion were declared by company witnesses to be 10 to 15 per cent too low.

Furthermore, the commission noted, the evidence disclosed that the applicant has sufficient productive capacity to meet requirements for the next four or five years, based upon the estimates of demands originally submitted. One of the applicant's witnesses testified that presently existing facilities are adequate to supply requirements for ten years, but not economically. *Re Central New York Power Corp. (Docket Nos. G-120 and G-702, Opinion No. 140).*

Telephone Association Not a Public Utility

In dismissing on jurisdictional grounds the application of a telephone association for permission to abandon operations, the Missouri commission examined the structure of the company and determined that it was not a utility under

commission regulation. The association was classified as a mutual organization operating without profit on an accommodation basis.

Neither its rental of phone boxes to both members and nonmembers at 25 cents per month, nor the returning to members of funds garnered in excess of operating expenses was deemed a sufficient basis for considering the association a telephone corporation rendering service for hire and therefore a public utility. *Re Miller Township et al. (Case No. 10,865.)*

Curtailment of Gas Service for Space Heating Approved

APPLICATIONS by several gas utilities for commission approval of company regulations limiting service to additional house-heating customers were granted by the Wisconsin commission. The existence of an emergency brought on by a critical shortage of productive capacity was considered sufficient ground for permitting the utilities to limit their undertakings of service.

The rules upon which the commission believed the service curtailment should be based provided for service to new homes equipped to heat with gas, also service to conversion units contracted for before a critical date, with new industrial, commercial, and conversion units on the nonpriority list and without gas service during the emergency.

Where a customer was willing to remove a conversion burner which might be eligible for service under the emergency rules, the commission authorized the utilities to charge to operating expense the cost of labor in reinstalling grates or other equipment necessary to restore the unit to its condition before conversion to gas. *Re Milwaukee Gas Light Co. et al. (2-U-2178, 2-U-2214, 2-U-2216).*

Telephone Service Ordered Notwithstanding Duplication

THE Wisconsin commission ordered a telephone company to extend its lines to serve the new home of a former customer after investigation of the utility's operating authority established that the residence was within the area of its undertaking. That the lines of another company ran past the residence was not considered a controlling factor.

Commissioner Bryan, in a dissenting opinion, pointed out that both the companies in the town, by rendering local service, had assumed an undertaking including the residence of the applicant. He objected to the subscriber's demand for the same telephone service in his new residence as he had in his old one. To grant such demand, he said, would result in endless duplication of facilities and in time many abandoned and useless telephone lines. *La Mar v. Commonwealth Telephone Co. et al. (2-U-2196).*

Informal Notice Is Criticized by Commissioner

A RAILROAD'S application for permission to abandon 525 feet of its trackage was approved by the majority of the Minnesota commission on a showing that no injury to the public or impairment of the railroad's ability to serve would result.

Commissioner Chase, in a strong dissenting opinion, conceded that in this case no harm would result from removal of the track but based his position on the fact that the railroad had not complied with the procedural features of the statute permitting track abandonment.

He scored the practice of giving telephonic notice either just before or during the hearing on the proposed track removal and described this substitute for written notice as "so silly as to deceive no one." Commissioner Chase feared that permitting such departure from established procedure in unimportant matters might establish a precedent which might be relied on in an important matter.

The commissioner reviewed the applicable statutes and summed up his stand with this statement:

> In both statutes it is obvious that the legislature intends that track removals shall only be permitted following a duly stated hearing, at a fixed time and place, and after formal advance notice has been given. Neither divine nor legislative decree has given to this commission the power of forgiveness.

Re Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (R-55, D-1754-c).

Rates for Telephone Directory Advertising Held Nondiscriminatory

THE defense of an advertiser to an action brought by a telephone company to recover for classified advertising, that a change from a 3-column to a 4-column directory constituted an unauthorized increase in rates was rejected by a California court where, despite the change, the advertiser had received the precise amount of space for which he had contracted.

To his charge of discrimination the court replied:

> Since all these rates had been approved by the railroad commission and applied equally to every advertiser whose name appeared in the directory, it is apparent that there was no discrimination practiced against this appellant and that he suffered no real injury.

Southern California Telephone Co. v. Carpenter et al. 171 P2d 142.

Certificate Awarded Carrier on Split Vote of Commission

RIVAL applications for operating authority over identical streets and highways presented a narrow question for the New York commission as to which carrier should be certified. It was decided by a 3-to-2 vote of the commission.

Chairman Maltbie's majority opinion relied on the general principles that the operation of two carriers over an identical line is not in the public interest and that public interest is better served where the same company operates both local and through service over a line, with no division of undertaking. On these principles the commission ruled out the suggestion by the carriers that both be authorized. Both carriers being well qualified, the commission selected the carrier which had received local consents.

In a dissenting opinion Commissioner Arkwright stressed the fact that the carrier whose application was denied had rendered service in the area for many years over established routes and that such a carrier, together with its investment, should be protected not only in the interest of the bus operator but in the interest of the public. *Re Parkway Bus Line et al. (Cases 12207, 12619).*

Reduction of Bus Fare Ordered

THE District of Columbia commission ordered a family-owned bus company operating both within the District and between the District and various points in Maryland to reduce its District fare, after finding that the rate of return on District operation was 41.77 per cent.

The commission ignored profits arising from transactions between the company and a family partnership, on the

theory that a utility and an affiliate must be considered as a single enterprise in financial matters relating to the utility if patrons are to be given equitable treatment.

It was necessary to make an allocation of cost since the same equipment was used in all operations. In making this allocation the commission considered both passenger and mileage factors.

Objection raised by commission's auditor, McElfresh, to the consideration of a bonus payment to the president as an operating expense was dismissed also by the commission with this ruling:

> There is no doubt, as McElfresh pointed out, that this company with its practically one-man ownership and control could completely nullify the effective determination of just and reasonable rates by the simple expedient of adjusting the president's salary to such an extent that the income of the company would always reflect a fair return on capital invested, but it has not been demonstrated that this has occurred in this case.

Re Washington, Marlboro & Annapolis Motor Lines, Inc. (PUC No. 3186, Formal Case No. 349, Order No. 3088).

Other Important Rulings

THE Indiana commission denied the application of a motor carrier for approval of a sale and transfer of a certificate of convenience and necessity on the theory that a certificate under which no operations have ever been conducted cannot be sold or transferred even to a reliable purchaser without adequate proof that the service is necessary to the public. *Re Evansville Suburban & Newburg Railway Co. et al. (No. 2990-A, 2).*

The complaint in an action by a grain warehouse corporation against a state commission to enjoin proceedings before the commission was found by the circuit court of appeals to state a cause of action, on the ground that the state commission lost jurisdiction when the Federal government by the Commodity Exchange Act invaded the field of warehouse regulation. *Board of Trade of Chicago v. Illinois Commerce Commission et al. 156 F2d 33.*

The application of a shipper for reparation against a railroad was denied by the California commission, which ruled that in a reparation proceeding the burden of proving rates unreasonable is on the party so alleging and that the shipper had failed to carry this burden. *Pillsbury Mills, Inc. v. Southern Pacific Co. (Decision No. 39252, Case No. 4803).*

The application of a motor carrier for a certificate of convenience and necessity was approved by the California commission, which overruled the existing carrier's objection to new competition on the ground that no showing as to the adequacy of existing service was made. *Re Stockton City Lines, Inc. (Decision No. 39274, Application No. 26580).*

The use of unadjusted book cost as a starting point in developing a rate base for a water and sewer company was deemed proper by the New Jersey Board of Public Utility Commissioners in a proceeding in which the company sought authority to increase its water rates and to establish sewer rates. *Re Packanack Lake, Inc. (Decision No. 2287).*

An action by several omnibus companies against the New York commission, in which the principal issue was the authority of the commission to modify certain transit fares which had been established by franchise agreements between the city and the company, was dismissed by the New York Supreme Court on the ground that it would be unwise from a practical standpoint to permit such agreements to infringe upon the rate-fixing authority of the commission. *East Side Omnibus Corp. et al. v. Maltbie et al. 63 NY Supp 2d 712.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

Appendix

Important addresses on questions of public interest delivered at the annual convention of the Section of Public Utility Law of the American Bar Association at Atlantic City, N. J., October 28-November 1, 1946

The Application of the Antitrust Laws to Regulated Industries

By ELMER A. SMITH
SENIOR GENERAL ATTORNEY, ILLINOIS CENTRAL SYSTEM

An eternal question in economics, and consequently in legislative policy and law, is whether competition or regulation better protects the public interest in commerce and industry.

Students of public utility law have assumed that the state legislatures and the Federal Congress made the choice between what Chief Justice Stone once called "rival philosophies,"[1] in so far as public utilities and carriers are concerned, when they passed laws providing for the comprehensive regulation of utilities and carriers.

But the antitrust division of the United States Department of Justice now thinks otherwise. That division is now urging for the first time in almost half a century that carriers regulated by the Interstate Commerce Commission in respect to rates are subject to regulation in respect to the same rates by the division through its power to enforce the Sherman Antitrust Act. This contention raises novel and important questions of great concern, not only to carriers but to shippers. It presents the question whether the nation's carriers are to be subjected to two different and inconsistent policies of regulation, one administered by an agency of Congress, and the other by an agency of the Executive.

This section in October, 1932, discussed a committee report on the applicability to public utilities of the antitrust laws. The committee concluded that the Federal government should adopt, as to carriers subject to regulation by the Interstate Commerce Commission, and as to public service companies generally, the principles sustained almost unanimously by the state courts that the state antitrust laws are not applicable to public service companies subject to control by public utility commissions.[2]

At the time this report was written, some thirty-five years had elapsed since the decisions of the Supreme Court in 1897 and 1898 in the Trans-Missouri and the Joint Traffic cases, in which the court applied the Sherman Antitrust Act to the railroads.[3] The court there held that agreements among railroads, giving to rate bureaus the power to fix and maintain rates and to impose fines for failure to comply with the terms of the agreements, were in restraint of trade and therefore illegal.

The antitrust division took the first real step in forty-five years to subject railroads to the provisions of the Sherman Act in respect to rates when it sought indictments in 1942 against railroad traffic officers for violations of that act.[4] Other government officers, however, knowing the part that the railroads would play in an offensive war, persuaded the Attorney General to discontinue the proceedings.[5] Suits were later brought by the state of Georgia and by the Depart-

ment of Justice against various railroads, charging them with violations of the Antitrust Act in the maintenance of their rate bureaus and in their rate-making procedures.[6]

THE antitrust division now would engraft upon the regulatory system provided for in the Interstate Commerce Act and administered by the Interstate Commerce Commission, some kind of regulatory system conjured up by the antitrust division and within its sole control—a system, moreover, as I shall later point out, diametrically opposed to the principles of regulation evolved by the Interstate Commerce Commission over a period of sixty years, and to the purposes of the Declaration of National Transportation Policy.

LET us consider at this point the setting within which the Trans-Missouri and the Joint Traffic cases were decided, the changes since made in the Interstate Commerce Act, and in rate bureau procedure.

The Interstate Commerce Act became a law on February 4, 1887. But by virtue of judicial decisions in the decade which followed its enactment, the commission, to use its own language,[7]

> . . . ceased to be a body for the regulation of interstate carriers. It is proper that Congress should understand this. The people should no longer look to this commission for a protection which it is powerless to afford.

It is not to be wondered that the Supreme Court, having first through its decision in the Maximum Rate Case[8] rendered the commission powerless to fix rates, reached the conclusion in these old antitrust cases that the country must look to competition to protect the public interest in the matter of rates. And the Solicitor General in his argument in these cases made the most of this point. He said in the concluding paragraph in the government's brief:

> As the law now stands, the commission has no power to prescribe or enforce rates. Competition secures reasonableness. The law enforces uniformity. In Interstate Commerce Commission *v.* Railway Co. 167 US 479, the court held that if Congress had intended to give the commission power over rates, it would have done so in unmistakable language. So too when Congress sees fit to take the railroads out of the operation of the natural laws of trade, it will do so, and for independent competition will substitute government regulation.

THAT Congress has done this very thing is shown by the legislative history of the Interstate Commerce Act.[9] It is only necessary here to refer to the changes wrought in the act by the Hepburn Act of 1906, which first gave the commission the power to fix maximum rates; the Mann-Elkins Act of 1910, which gave the commission the power to suspend rates pending an investigation of their reasonableness; the Transportation Act of 1920, which gave the commission the power to fix minimum rates, to control the issuance of securities, to authorize abandonments, construction, and extensions; the Motor Carrier Act of 1935, which subjected motor carriers to regulation; the Transportation Act of 1940, which gave the commission the power to regulate water carriers, and which prohibited discrimination between territories; and lastly the act of 1942, which gave the commission the power to regulate freight forwarders. This is but a thin outline of a few of the far-reaching and fundamental changes made in the act since the Trans-Missouri and the Joint Traffic cases were decided.

The Transportation Act of 1920 introduced, as the Supreme Court has so many times declared,[10] a new policy of interstate commerce legislation. That policy is an affirmative one. It emphasized the aim of establishing an adequate national transportation system. This purpose was confirmed and strengthened in the elaborate Declaration of National transportation Policy found in the Transportation Act of 1940. This declaration has a most important bearing upon the question we are here considering.

Congress declared it to be the National Transportation Policy

> to provide for fair and impartial regulation of all modes of transportation subject to

the provisions of this act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences, or advantages, or unfair or destructive competitive practices.

This policy is directed

all to the end of developing, coördinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

But Congress did not stop with a statement of the end to be achieved. It especially provided that all the provisions of the Interstate Commerce Act shall be administered and enforced with a view of carrying out this declaration. Congress has announced no such policy with respect to any other segment of our national economy. This declaration is a congressional recognition of the sharp distinction between the carrier industry, an industry affected by the public interest, and manufacturing and private enterprises generally which have heretofore been free from such regulation as we now find in the carrier and public utility field.

The many amendments to the act beginning with 1906 have made it an effective instrument for the regulation of carriers. The regulation now administered by the Interstate Commerce Commission under the provisions of the act is all pervasive. It controls every carrier activity which in any way affects the public interest.

Under the act the commission's jurisdiction now includes railroads, sleeping-car, express, and pipe-line companies, common and contract motor and water carriers and freight forwarders. If the commission finds that a rate exceeds a reasonable maximum rate, the commission reduces it. If the rate is less than a reasonable minimum rate, the commission increases it. If it is unjustly discriminatory or unduly prejudicial, the commission requires the removal of the discrimination or prejudice. If unlawful rates resulted in damages in the past, the commission awards damages. If carriers propose to increase or reduce their rates, the commission has the power to suspend such rates pending a determination of their lawfulness.

There is no wrong that railroads, motor or water carriers can impose upon the shippers or travelers of this country for which no remedy exists under the Interstate Commerce Act. As the Supreme Court itself has said,[11] the act embodies a remedial system which is complete and self-contained.

The antitrust division as late as 1940 believed that the regulation of carriers provided for in the Interstate Commerce Act protected the public interest, for it said[12] in a brief filed in the Supreme Court:

> In other words, in the case of the railroads, there has been a substitution of government regulation for competition as a means of protecting the public interest.

The Supreme Court, when it came to decide this case, said:

> Congress has not, in its regulatory scheme (respecting broadcasting), abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

What precedents in economics and in law hang upon the decision of one justice! The decision of the Supreme Court in the Trans-Missouri Case was by a 5-to-4 vote; the decision in the Joint Traffic Case was by a 5-to-3 vote. Justice Brewer, who voted with the majority in the Trans-Missouri and Joint Traffic cases, said later[13] that, upon a further examination which had not disturbed the conviction that these cases were rightly decided, he thought that in some respects the reasons given for the judgments could not be sustained.

The recent decision of the Supreme Court in the antitrust suit brought by Georgia,[14] in which the court held that

it had original jurisdiction, was by a 5-to-4 vote.

This nation, after long deliberation and consideration by Congress,[15] embarked sixty years ago upon a policy of regulation of railroad rates. This policy was adopted after the nation had found by a bitter experience that competition did not protect the public interest.

As the late Federal Coördinator of Transportation, Joseph B. Eastman, said in one of his reports:[16]

> Experience has shown that in transportation free and open competition without let or hindrance does not protect the public but instead does it harm. For many years we tried it with the railroads and it did not work. . . . It was these abuses of competition which were mainly responsible for the creation of the Interstate Commerce Commission in 1887, as a reading of its first annual report will plainly show.

THE decisions of the commission dealing with the rates of motor carriers disclose that the kind of competition which the antitrust division would substitute for the regulation provided for by Congress was more recently tried out in the motor carrier industry and was again found wanting. The commission said in one of these cases:[17]

> The evidence of respondents (motor carriers) . . . reveals that the motor carrier industry in this territory is in a demoralized condition, due principally to conflicting rates and practices, the lack of unity among respondents, and continuing rate wars. There can be no doubt that the rate structure is filled with inequalities and incongruities.

A study of the history of regulation of water carriers will disclose precisely the same situation: the total failure of competition to protect the public interest, and the substitution of regulation for competition.[18]

An examination of the amendments to the Interstate Commerce Act made during the last four decades, the reports of the congressional committees and the congressional debates which led to these amendments, and the annual reports of the commission, show that every amendment has been a step away from the theory[19] that "competition must continue to be the keystone of our governmental policy in transportation," as urged by the antitrust division, and towards regulation as that keystone.

A study of the Interstate Commerce Act, which now embraces 210 printed pages, its history, and its administration by the commission, will demonstrate that the act was intended by Congress to provide, and in its actual day-by-day application by the commission provides, within human limitations, a complete protection of the public interest. There are no gaps in that protection which remain to be filled in by the antitrust division.

THE railroads, following these old decisions, dissolved the rate bureaus condemned by the court, and established new bureaus under articles of association which very substantially changed the procedure which had theretofore been followed. The railroads withdrew from the rate bureaus the power to fix rates and to assess fines. The procedure, developed over a period of five decades, generally provided for conferences among railroads and shippers respecting rates. The right of each railroad to determine for itself what rate it will establish is recognized and has been freely exercised.[20] The procedure reflected the response of both carriers and shippers to the sweeping changes made in the Interstate Commerce Act in the years that followed 1906, and to the recognition by both carriers and shippers that they occupy a place of responsibility for the effective and fair administration of that act.

It is significant that the commission in its annual report for 1898—the very year in which the Joint Traffic Case was decided—as well as in later reports, referred to these rate bureaus, and said that it was difficult to see how railroads could be operated, with due regard to the interest of the shippers and the railroads, without concerted action of the kind afforded through the bureaus. The commission in 1944, forty-six years later, again considered the place of rate bureaus in the regulatory scheme and said

that there was danger that undue breadth in applying the antitrust act would interfere with carrying out the Declaration of National Transportation Policy against "unfair and destructive competitive practices."[21]

The late Commissioner Eastman, in the course of his statement before the Senate Committee on Interstate Commerce in 1943,[22] said with his usual insight and wisdom:

> I am wholly convinced that if the carriers of the country are to respond to the duties and obligations imposed upon them by the Interstate Commerce Act, and if the rate structure is to be reasonable, free from unjust discrimination or undue preference and prejudice, as simple and consistent as may be, reasonably stable, and sufficient for the financial needs of private ownership and operation, the carriers must be in a position to consult, confer, and deal collectively with many phases of the matter, and that while the ultimate right of the individual action should be scrupulously preserved, it is desirable that such action should not be taken without prior notice to fellow carriers and shippers and an opportunity for them to express their views.

It would seem that some weight should be given to the judgment of the commission and its members in such a matter, with their sixty years of experience in the problems and complexities of rate making.

THE complaint which the antitrust division now makes is that the railroads through these various rate bureaus and conferences engage in collective action respecting rates. The division contends that freight rates must be made by individual railroads acting alone and without regard to the interests of other railroads, shippers on other railroads, and shippers in other territories, and without regard to the standards of rate making found in the Interstate Commerce Act.

Let us consider, therefore, the reasons for the rate bureau procedure.[23] The maintenance of rate bureaus, which provide a medium through which railroads and shippers may consult and confer with one another respecting rates, and reach a conclusion respecting rates that will conform to the standards laid down in the Interstate Commerce Act, is imperatively required in the effective administration of that act.

The act sets up standards of rate making which constitute the very heart of the act, to the attainment of which standards the act is directed. Rates must be reasonable. They must be nondiscriminatory.

They must not be unduly prejudicial or preferential. The division contends that these standards are for the guidance of the Interstate Commerce Commission alone, and that the railroads may not under the Antitrust Act collectively consider whether a proposed rate which may affect all railroads and all shippers in a given region or in several regions is reasonable or discriminatory.

THE Assistant Attorney General in charge of the antitrust division in a recent interview[24] said that the division contends that the legislative power to prevent discrimination should not be delegated from the commission to some private group. Congress, recognizing the distinction between the transportation industry and other industries, has set up standards of rates—standards of pricings—for the transportation industry. The commission applies these standards in the cases as they come before it. It ought to be plain that the standards which control the commission in fixing lawful rates are the standards which the carriers themselves, to the best of their ability, must follow when they initiate rates.

The initiation of rates by carriers under these standards is an integral part of the rate-making procedure contemplated by the Interstate Commerce Act. The whole process of rate initiation by the carriers, and the review of those rates by the commission, is a seamless web, and cannot be separated, the carriers controlled in their initiation by theories of competition enforced by the antitrust division, and the commission testing the rates by different standards—those found in the act. It is impossible for regulation

to have even a semblance of success on any such theory. Regulation does not begin with the commission. Congress intended it should begin with the carriers when they initiate rates. Otherwise the establishment of rates by carriers would be an invitation to litigation, and a burden upon shippers, carriers, and the commission.

The commission more than twenty years ago said that the railroads, in the performance of the duty imposed upon them of initiating rates, must exercise judgment and discretion by a like resort to existing facts, circumstances, and conditions in the first instance, just as the commission must later do when rates are brought in question before it.[25] The rate bureau procedure now attacked enables the carriers to do this very thing.[26]

THE antitrust division in contending that rates should be made by the individual carriers based upon individual needs—an argument, by the way, made by the Solicitor General fifty years ago in the Joint Traffic Case—overlooks the fact that the rates of an individual railroad are but an integral part of what is becoming a national rate structure. The Declaration of National Transportation Policy in the Transportation Act of 1940, and particularly the amendments by that act to § 3 of the Interstate Commerce Act, dealing with discrimination between territories, shows that Congress now intends that the rate structure in this country should be treated more from the standpoint of the needs of the nation as a whole, and less from the standpoint of the interests of one region or of an individual carrier.

The commission has recently said that the rate structure of this country is not a loose aggregation of separately established rates, but a single entity composed of related rates.[27] It gave emphasis to this point in its recent decision in the Class Rate Case.[28] The rates which together make up a rate structure necessary to satisfy both the standards prescribed by law and the legitimate requirements of commerce are interrelated and interdependent to an extent not generally appreciated by those who are not called upon to deal with them.[29]

The commission as long ago as 1903 first announced[30] the principle that in fixing rates the commission would have regard not altogether to any one particular railroad but to the entire situation, and would consider the effect of whatever order it might make upon all the railroads. This principle has been written into the act by an unbroken line of decisions,[31] and Congress has many times amended the act without changing this interpretation.

THESE decisions, and now the act itself, emphasize the duty of an individual carrier in proposing rate changes to consider how those changes would compare with the rates of other carriers in the same and in other territories, and particularly with rates and rate relationships fixed by the commission, how they would affect rate relationships and shippers on other railroads and in other territories, how they would affect the rate structure and consequently the revenues of the carriers as a whole, whether they would strengthen or weaken an adequate system of transportation. These matters cannot be intelligently or fairly determined by one carrier acting in a vacuum.

The commission has many times held that individual carriers in their own interests are not free to jeopardize the revenues of the carriers generally.[32] The division seems utterly unable to sense the affirmative and constructive policy found in the Declaration of National Transportation Policy, which looks to the maintenance of an adequate system of transportation. The policy of regulation which the division would enforce is destructive, and reckons not at all with the declared policy of Congress and with the principles of rate making developed by the commission through case law.[33]

The division, while recognizing that rates should conform to the Interstate Commerce Act, sets up its own and a single standard of rate control, to be effected through the enforcement of the

Antitrust Act: That rate shall be competitive. This standard is not found in the Interstate Commerce Act. The division apparently contemplates unrestrained and unbridled competition, something which the commission has opposed for almost sixty years. It further contends that there is a zone of reasonableness between a reasonable maximum and a reasonable minimum rate, and that within this zone the standard of the division, and enforced by the division, shall control.

BUT the Declaration of National Transportation Policy is specifically directed, among other things, to the establishment not of competitive charges, but of "reasonable charges, without unjust discriminations, undue preferences, or unfair or destructive competitive practices." This policy is to be administered by the commission, not the division. There will be times when carriers cannot obtain maximum rates, because of carrier or market competition, or other factors. But fundamentally the statutory standard of a reasonable maximum rate, not something less, protects the public interest and the carriers at the same time. If rates exceed reasonable maximum rates, the commission reduces them, as it has many thousands of times.

The division complains because the railroads in the making of rates consider the interests of the railroads as a whole. The division here comes in sharp conflict with the principles that the commission has evolved over a period of sixty years in its administration of the act. The commission recently said:[34]

> While § 15a of the Interstate Commerce Act . . . is not now in the form in which it was originally enacted in the Transportation Act, 1920, and no longer contains the provision for the recapture of excess earnings, it still clearly recognizes the principle that we must, in prescribing just and reasonable rates, consider the needs of the railroad transportation systems as a whole, by its insistence upon the "need, in the public interest, of adequate and efficient transportation service" and the "need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." As we found by practical experience, long before there was any § 15a, "adequate and efficient transportation service" cannot be provided, and revenues sufficient for that purpose cannot be supplied, if attention be confined to the earnings of the best situated and most prosperous railroad companies.

If this is a sound principle of rate making for the commission, it is a sound principle of rate making for the railroads to follow in the initiation of rates.

WHAT is the reason why the antitrust division, after a lapse of almost fifty years, now takes the position that the Antitrust Act applies to the rate-making procedures which the carriers have developed for the purpose of complying with the standards laid down in the Interstate Commerce Act?

It is essentially a distrust of the regulatory process and of the tribunal vested by Congress with the power and the duty to administer that process. An examination of the addresses and statements made, and the books written, in the past few years by officers of the antitrust division makes it clear that in the opinion of the division the Interstate Commerce Act has failed in its high purposes, and that the administration of the act by the commission has not protected the public interest.[35] The division seems to be unable to recognize the difference between a regulated and an unregulated industry. It has never understood either the meaning of regulation, the regulatory processes, or the purposes of regulation.

The officers of the division have been prone to use the phrases, "excessive rates" and "discriminatory rates," the implications being that the regulation by the commission has been ineffective and that such regulation has brought about the very violations of law which the act was intended to prohibit and prevent. They have not disclosed what standards they use in determining whether rates are "excessive" or "discriminatory."

THE Assistant Attorney General in charge of the antitrust division in a recent book[36] concedes, although rather grudgingly it seems to me, that through-

out its career the Interstate Commerce Commission has succeeded in the main in the purposes which it has intended to serve. But if this be so, why is not the antitrust division willing to let the commission continue to regulate carrier rates, applying to the rates the standards laid down in the Interstate Commerce Act, without insisting that regulation by the antitrust division shall be engrafted upon regulation by the commission?

The author says that investigations conducted by the Department of Justice indicate that more than 99 per cent of the railroad rates filed with the commission become the "lawful rates" without any review by the commission. The conclusion which the author would have his readers draw from this comparison is that the commission after all does not effectively regulate rates, that it passes upon less than 1 per cent of the rates, and that the public interest is without protection respecting the other 99 per cent, and that the division must therefore step in and regulate this other 99 per cent through the medium of the Antitrust Act.

The fallacies involved in this computation, the errors in the conclusion which the division draws from it, have been pointed out by men of no less authority than the late Commissioner Eastman and Commissioner Aitchison.[37]

It is here sufficient to point out that the commission itself has said:[38]

> The rate structure of the country is . . . that which has come out of the many formal proceedings before us over a long period of years.

Studies made by the railroads show that 80 per cent to 85 per cent of the tonnage moved in the United States moves on rates that are the same or less than those approved or fixed by the commission following extended hearings. The 310 volumes of the commission's reports are filled with thousands of decisions fixing not only the level of rates —that is, decisions requiring reductions in rates—and fixing reasonable maximum rates, but requiring the elimination of discrimination and prejudice.

The commission many times in the past four decades has been called upon to consider and fix the level of the rate structure either in the nation as a whole or in particular territories.[39] All these decisions show the extent to which the rate structure of the country has been subjected to a "continuous administrative supervision."[40]

The antitrust division has, however, further evidenced in the most striking way its distrust of the administration of the act by the commission. Under the Federal statutes,[41] suits to set aside orders entered by the commission must be brought against the United States. The division has sought through the powers it possesses of representing the United States in such suits to defeat many of these orders in the courts, by confessing error on the part of the commission, and thus to control the administrative discretion of the commission on the facts in a particular case—a discretion vested by Congress in the commission and not in the division.[42] Congress did not appoint the Department of Justice to act as a board of review for orders of the commission.

The extent to which Congress trusts regulation in other businesses affected with the public interest is shown by the statute subjecting the rates of telephone and telegraph companies to regulation by the Federal Communications Commission.[43] We have here a regulatory statute patterned after the Interstate Commerce Act, an act which blazed the trail in regulatory legislation.

It is not suggested that the Antitrust Act should be applied to these two communication industries. Think of the competing routes by telephone and telegraph that could be worked out between Chicago and New York city! The only difference between the telephone and telegraph companies on the one hand and the railroad companies on the other is that the long-distance telephone lines are all owned and operated by one corporation, as are the telegraph lines, while the rail lines are owned and operated by many different corporations. Yet as the late

Commissioner Eastman pointed out in the statement he made before the Senate Committee on Interstate Commerce in 1943:[44]

> The railroads of the country constitute a connected and interlacing system of lines over which freight cars of all ownership circulate freely, and a very great part of the traffic moves under joint rates in which at least two and often many separate railroads participate. The same is true, although in lesser degree, of the other carriers. It is also true that there is a great interdependence between rates. Where there is more than one route between two points, as a practical matter, the rates must ordinarily be the same over all the routes. Even in the case of rates from widely separated origins to a common market, a change in one of the rates may impel changes in all of them.

If regulation can be trusted to protect the public interest in respect to telephone and telegraph rates, it can be trusted to do so in respect to carrier rates.

The Federal Communications Commission in a recent decision[45] approved the merger of the Western Union and Postal Telegraph companies. That commission held that the merger was in the public interest and that it otherwise conformed to the amendment (§ 222) to the Federal Communications Act of 1934. The commission said in part:

> It has long been recognized that, in many fields, competition normally provides assurance for the best service at the lowest possible cost to the public. The history of the domestic telegraph industry, however, indicates that competition between Western Union and Postal has not had the expected and desired effects. Competitive practices have resulted in useless paralleling of facilities, duplication of operations, and wasteful expenditure of resources and man power. Such competition has, in a large measure, been responsible for the unsatisfactory financial condition in which both Postal and Western Union have found themselves during the course of the last decade or more.

There are practical aspects of rate making that never seem to have been glimpsed or understood by the officials of the antitrust division.

Railroads must have earnings sufficient to enable them to maintain a transportation system adequate to meet the needs of the commerce of the United States, the postal service, and the national defense, the ultimate purposes set out in the National Transportation Policy. It is axiomatic that adequate earnings are dependent upon adequate rates, rates that reflect the cost of wages, the cost of materials and supplies, and taxes, and a fair return. To say that the railroads collectively have no responsibility for establishing rates which will conform to the standards laid down in the act and at the same time enable the railroads to carry out the policies of Congress, places upon the Interstate Commerce Commission an impossible burden.

Congress declared it to be a part of the national transportation policy to "encourage fair wages and equitable working conditions."

It will take something more than rates which reflect the kind of competition which the division seeks, to enable the railroads to carry out this particular part of our transportation policy. Emergency boards appointed by the President under the Railway Labor Act to investigate railroad wage disputes have recently pointed out that the railroad wage structure is essentially a national one, and that railroad wage issues must be dealt with in national terms.[46] A national wage structure, bearing in mind that out of every dollar of revenue taken in by the railroads from 40 per cent to 45 per cent is paid out immediately in wages, requires a national rate structure. It further requires that each railroad in initiating rates shall give consideration to the effect of proposed rate changes upon the national rate structure, and the ability of that structure to aid in carrying out the National Transportation Policy.

You can understand the factors that really control the level of rates when I tell you that the railroads are this year paying out in wages about $1,500,000,000 more than they would have paid out had the level of wages in 1940 continued in effect. Boards appointed pursuant to the provisions of the Railway Labor Act have on three different occasions since 1940 approved substantial increases in

wages of railroad employees. In each of those cases the President of the United States approved increases over and above those awarded by the boards. Increases in the cost of materials and supplies since 1940 have amounted to about $500,000,000.

Thus the railroads in 1946 are confronted with increases of almost $2,000,000,000 in their costs over and above the level of costs in effect in 1940. In the past few weeks the President signed the so-called Crosser Bill, providing for additional benefits to employees under the Railroad Social Security Act. This will cost the railroads an additional sum of $90,000,000 in payroll taxes in 1947. The railroads of the United States will pay to the Federal government in payroll taxes in 1947 the sum of $350,000,000. No payroll taxes were in effect in 1934. The factor which has controlled in the past, controls today, and will control in the future the level of railroad rates, is not competition enforced by the antitrust division, but the cost of operation.

THURMAN ARNOLD in a statement made in 1943 before the Senate Committee on Interstate Commerce[47] said it was the business of the antitrust division to enforce the Antitrust Act to see if the division could not get this rate structure down. Mr. Arnold and his successors can get the rate structure down when they get the level of wages, the cost of materials and supplies, and taxes down, and not before.

What would probably be the result if the division's views were finally sustained and the railroads were subjected to regulation by the division through its power to enforce the Sherman Act? The division envisages indiscriminate rate cutting among the carriers, all leading to general reductions in rates. An examination, however, of the results of operations of the carriers in the last thirty years, and of the present level of their costs, and particularly the level of their wage rates, will show that the carriers are in no position to engage in such competitive rate cutting as the division seeks to bring about. A living wage for the carriers must reflect fundamentally their cost of service. It seems more likely, therefore, in view of the interdependency of rates, that with carriers denied the right to confer with other carriers and with shipper groups respecting changes in rates, the existing rates would be "frozen," and that only those changes would be made in rates which were required by the orders of the commission.

The division, in short, would require the shippers of this country to file complaints with the commission in order to obtain changes in rates which can now be obtained under the existing rate bureau procedure.

As Commissioner Aitchison recently said:[48]

> From the standpoint of administration the problem of the commission is greatly simplified if the carriers which it regulates are permitted to organize so that they may be dealt with as units, rather than as wholly separated and individual entities. We have been informed by many of the state railroad and utilities commissions that this is also their experience. . . . The process of negotiation between carriers and shippers for rates or for services is greatly simplified if shippers may deal with the carriers collectively. Proper functioning of this process materially aids in the development of fair and equal rate adjustments, and thus lessens the task of the regulating bodies.

IT is of the greatest significance that in no other industry has the purchaser of a commodity so much to say regarding its price as the purchaser of transportation service. The means through which the purchaser expresses his views, and ascertains at the same time the views of his competitors respecting changes in freight rates, is the rate bureau. And the purchaser under rate bureau procedure is not required to submit his proposal to individual railroads at different times and places. His proposal is submitted and considered at one time and place by all interested railroads and shippers. He always retains, of course, the right to file a complaint with the commission.

There is another aspect of this matter which I think deserves attention. It will not be contended that the division or the

courts have any power to fix freight rates. Indeed, the division is powerless to control the prices of commodities generally. It may well be that the division can control trade practices, but the times show how powerless the division is to make any dent whatever upon prices. I am not criticizing the division for this; I am only stating a fact.

Compare the impotency of the division to deal effectively with prices and with profits with the power which the Interstate Commerce Commission possesses. The commission fixes rates. Through its power to fix rates the commission controls profits. And if there is any doubt in the minds of any of you on this score, I refer you to the decisions of the commission, and particularly to its decisions in the General Rate cases in the last four decades in which it has had before it the level of the rates of all railroads in the United States.[49] No one can examine these decisions and say that the commission is railroad minded, or that it has been indifferent to the public interest. It has sought to exercise its best judgment in applying the standards of rate making laid down in the act in cases of great complexity as well as importance. These cases illustrate the vast power which the commission exercises.

THE commission approved last June an increase in rail rates of about 6 per cent. This is the first permanent increase in rates which the railroads have had since 1938. The question whether the railroads are reasonably entitled to a further increase is now pending before the commission. Compare this 6 per cent increase in rail rates, which the railroads believe to be inadequate—they have asked for a total increase averaging about 20 per cent—with the increase in the price levels generally in this country since 1938.

But the commission has done more than fix rates and thus control profits. The commission through its administration of the Interstate Commerce Act has lifted the whole level of business ethics in the field of transportation. It has placed the relations between carriers and shippers, and the relations between the carriers themselves and their dealings with one another on a plane which, to borrow a phrase from Justice Cardozo,[50] "imports good order and moderation and a decent regard for the welfare of the group."

A large and extremely important segment of our national economy, as a result of the passage of the Interstate Commerce Act and its administration by the commission, has been subjected to the rule of law. What may be said to be economic wrongs are prohibited, and remedies are provided for those wrongs. Economic rights are protected. Something can be said in the public interest for a system of regulation under which the lowliest shipper on the Pennsylvania Railroad can hail that railroad before the commission at the price of a postage stamp and obtain a determination of the question whether the rates charged that shipper are unreasonable or discriminatory, and, if so, what would be lawful and nondiscriminatory rates which the Pennsylvania must charge in the future. The commission in its administration of the Interstate Commerce Act has made a real contribution to the supremacy of law and order in newer types of conflicts and controversies among men.

WE do not have to speculate here on what form the control, operation, or ownership of carriers may take in the coming years. It is sufficient to say that in this era we are concerned with what form of control will best protect the public interest under private ownership and operation. This country is committed by tradition and by legislative policy, and by the whole texture and fiber of our national life, to private ownership and operation of the carrier system of this country, but subject to control and regulation by law. Regulation, under such circumstances, is but the exemplification of the democratic way of life amid the complexities of the machine age.

It is the task, therefore, of every individual who has any concern or interest

in the free enterprise system to do his part in making regulation work. Regulation cannot possibly work when the responsibility for regulation is divided. The carriers cannot serve two masters, one an agent of Congress, and the other an agent of the Executive, with widely divergent views respecting the principles which should govern the determination of rates.

The public interest ought to and it ultimately will prevent any steps being taken which will interfere or thwart the regulation provided for in the Interstate Commerce Act. No branch of the Executive department should be permitted to participate in the regulation of carriers in such a way as will mark or limit the exercise by the commission of the powers entrusted to it by Congress, or substitute the judgment of the antitrust division for that of the commission as to how the commission's powers should be exercised.

If the division had consulted the shippers of the United States it would have found a unanimity of opinion on the question we are here considering. No shipper wants to transfer to the division any part whatever of the responsibility for regulating carrier rates.[51] The unanimity of opinion on this point by the shippers of this country who pay the rates gives emphasis to the late Commissioner Eastman's statement in 1943 before the Senate Committee on Interstate Commerce:[52]

> If the rate bureaus and the like had, over their long history, been the source of grave abuse which prejudiced seriously the interests of the shippers, you may be sure that long since there would have been an uprising, and that this situation would have been made clear to you by a heavy tide of complaints pouring into the commission and into the Congress of the United States. If there had been or is such a tide, it has somehow escaped my knowledge. I believe this hearing will demonstrate that such complaint as there is has its source not in the shippers of the country, but in the lawyers and economists of the Department of Justice.

What we are now witnessing is a sharp controversy between an agency of Congress and an agency of the Executive. The agency of Congress, entrusted with the duty of carrying out the National Transportation Policy and applying the Interstate Commerce Act, is now told by an agency of the Executive that its approach to regulation is wrong, that it has failed in the effective administration of the act, and that the theories of regulation held by the agency of the Executive should control the agency of Congress. Thus underlying this controversy is the question whether the commission is to continue as an independent tribunal, or whether its construction of the Interstate Commerce Act, and the procedure it has evolved in the administration of that act, should be subjected to the control of the antitrust division.

What Professor Sharfman said many years ago in an article appearing in the *Encyclopedia of Social Sciences*[53] bears repeating today:

> In the face of these large responsibilities, however, it is of crucial importance that the commission with its administrative independence be . . . maintained. Executive or legislative interference tends to substitute political power for informed and disinterested judgment.

The commission is confronted with extremely difficult, complicated, and important tasks. It may be doubted whether any other Federal tribunal has tasks and responsibilities confronting it of the complexity of those which confront the commission. No other Federal tribunal regulates a public servant performing such an infinite number and variety of services, for which there is such an infinite number of prices, as the commission. Each one of these prices may upon complaint or investigation be fixed by the commission. Consider, if you will, the public interest in a system of regulation which affords such protection to the public.

What Chief Justice Hughes said sixteen years ago is even more true today:[54]

> I suppose no agency of government has more complicated problems than those which confront the Interstate Commerce Commission, and no intelligent student can fail to realize that the success of this endeavor in a sphere of highest importance is to a very great extent the measure of our capacity for self-government.

APPENDIX

The underlying problem confronting the commission, in the language of the congressional Declaration of National Transportation Policy, is the administration and enforcement of the Interstate Commerce Act with a view of carrying out that declaration. This is the duty and responsibility of the commission and not of the antitrust division. The division ought not to make this difficult task more difficult by seeking to impose upon the commission its theories of carrier regulation and control. It is not in the public interest for it to do so.[55]

Footnotes

[1] United States *v.* Trenton Potteries, 273 US 372, page 398; see also address of Hon. Clyde B. Aitchison before the Portland, Oregon, Chamber of Commerce, delivered on April 24, 1944, on "After the War Is Over—Transportation Problems," Vol. XI, *ICC Practitioners' Journal*, May, 1944, page 743.

[2] Section of public utility law, American Bar Association annual meeting, October 10, 11, 1932, Washington, D. C. Report of committee on the applicability to public utilities, especially in the field of transportation, of the antitrust laws, and the fundamental principles involved in the light of the development of regulatory control.

[3] United States *v.* Trans-Missouri Freight Assn. 166 US 290, decided March 22, 1897; United States *v.* Joint Traffic Assn. 171 US 505.

[4] During this period of forty-five years the Department of Justice brought only two cases under the Antitrust Act against the railroads which directly challenged their rate-making procedures. These cases were dismissed by the department following action by the Interstate Commerce Commission. *Decrees and Judgments in Federal Antitrust Cases*, pages 243-245, 469. See also *Annual Report of Attorney General* for the year ended 1910.

[5] These threatened prosecutions of the railroads and their officers and the position taken by the government officials in Washington having to do with transportation, are referred to in the statements made by the late Joseph B. Eastman in the course of the hearings before the Committee on Interstate and Foreign Commerce, U. S. Senate, 78th Congress, 1st Session, on S 942: A Bill to Amend the Interstate Commerce Act and to Provide for Agreements between Common Carriers by Railroad, etc., pages 819-884, and particularly pages 852-860. See also the statement made by Thurman Arnold, pages 213-285.

[6] State of Georgia *v.* Pennsylvania Railroad Co. et al. 324 US 439 (original suit); United States *v.* Association of American Railroads et al. U. S. District Court, Lincoln, Nebraska, 4 FRD 510.

[7] Eleventh annual report of Interstate Commerce Commission for the year 1897, page 51; C. N. O. & T. P. Ry. Co. *v.* Inter. Com. Com. 162 US 284 (1896); Inter. Com. Com. *v.* Ala. M. Ry. Co. 168 US 144 (1897); C. N. O. & T. P. Ry. Co. *v.* United States, 167 US 479 (1897), The Maximum Rate Case.

[8] C. N. O. & T. P. Ry. Co. *v.* United States, 167 US 479.

[9] Hon. Clyde B. Aitchison, "The Evolution of the Interstate Commerce Act, 1897-1937," *George Washington Law Review*, Vol. V, March, 1937, page 289.

[10] Railroad Commission of Wisconsin *v.* C. B. & Q. R. R. Co. 257 US 563; New England Divisions Case, 261 US 184; Dayton-Goose Creek R. R. Co. *v.* United States, 263 US 465.

[11] Terminal Warehouse Co. *v.* Pennsylvania Railroad Co. 297 US 500, page 514.

[12] Federal Communications Commission *v.* Sanders Brothers Radio Station, 309 US 470.

[13] Northern Securities Co. *v.* United States, 193 US 197, page 361.

[14] State of Georgia *v.* Pennsylvania Railroad Co. et al. 324 US 439 (original suit).

[15] Sharfman: *The Interstate Commerce Commission*, Part I, pages 10-19.

[16] Third Report, House Document No. 89, 74th Congress, 1st Session, January 23, 1935. See also report dated March 10, 1934, Senate Document No. 152, 73rd Congress, 2nd Session.

[17] Central Territory Motor Carrier Rates, 8 MCC 233.

[18] "The Development of Federal Regulatory Control over Water Carriers," by Erle J. Zoll, Jr. Vol. XII, *ICC Practitioners' Journal*, March, 1945, page 552.

[19] *Justice in Transportation*, by A. C. Wiprud, formerly special assistant to the Attorney General.

[20] The procedure followed by rate bureaus has been described at length in the recent report of the Board of Investigation and Research on rate-making and rate-publishing procedures of carriers, November 29, 1943, House Document No. 363, 78th Congress, 1st Session, and in the hearings before the congressional committees considering bills to regulate rate bureaus: Hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st

Session, on S 942; before a subcommittee of the House Committee on Interstate and Foreign Commerce, 79th Congress, 1st Session, on HR 2536; and Report No. 1212, 79th Congress, 1st Session, to accompany HR 2536; hearing before the Senate Committee on Interstate Commerce on HR 2536, and Report No. 1511, 79th Congress, 2d Session, to accompany HR 2536. See also annual report of Interstate Commerce Commission, 1897, page 98.

[21] The commission's annual report for the year 1945 repeats what it said in its annual report for 1944 respecting rate bureaus. The commission some twenty-five years ago at the request of the Senate conducted an investigation of a western rate bureau, found that it serves many useful purposes, promotes economy and efficiency, is of advantage to shippers as well as carriers, and that its operation tends to obviate or remove the discrimination which the law condemns. (In *Re* Transcontinental Freight Bureau, 77 ICC 252.)

[22] Hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 875.

[23] Thurman Arnold, formerly Assistant Attorney General in charge of antitrust prosecutions, said, in the course of a statement which he made before the Senate Committee on Interstate Commerce which was considering S 942, that the whole conference method of making rates had been built up through government acquiescence. (Hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 231.)

[24] *Daily Traffic World*, October 8, 1946.

[25] Anadarko Cotton Oil Co. *v.* A. T. & S. F. Ry. Co. 201 ICC 43, page 50. The commission has recognized in a long line of cases that the carriers are just as much an instrument for the administration of the act as is the commission. Bone Dry Fertilizer Co. *v.* A. & C. L. Ry. Co. 186 ICC 124, page 128; see also Export and Import Rates, 205 ICC 511, page 522: Lake Cargo Coal Cases, 139 ICC 367, page 391; El Paso & S. W. Ry. Co. *v.* Arizona Comm. 51 Fed (2d) 573, page 576; Lime Rock from Sugar Factory, Utah, to Idaho, 231 ICC 278, page 281.

[26] Commissioner Aitchison has commented to this effect. Hearings before House Committee on Interstate Commerce on HR 2536, page 14.

[27] Summer & Co. *v.* Erie Railroad Co. 262 ICC 43, page 49.

[28] Class Rate Investigation, 1939, 262 ICC 447, page 690; ——— Fed Supp ———.

[29] Report No. 1212, 79th Congress, 1st Session, to accompany HR 2536.

[30] Proposed Advances in Freight Rates, 9 ICC 382.

[31] Receivers and Shippers Assn. *v.* C. N. O. & T. P. Ry. Co. 18 ICC 440, page 464; New England Lumber Rates, 43 ICC 641, page 653; Holmes & Hallowell Co. *v.* G. N. Ry. Co. 60 ICC 687, page 708; Coke from Southern Points, 204 ICC 767, page 773; General Commodity Rate Increases, 1937, 223 ICC 657, page 774; Property Owners' Committee *v.* C. & O. Ry Co. 237 ICC 549, pages 577, 578.

[32] Trunk Line and Ex-Lake Iron Ore Rates, 69 ICC 589, page 164; Trans-Continental Cases of 1922, 74 ICC 48, page 71; Iron and Steel Articles from New Orleans, La. 74 ICC 146, page 152.

[33] Salt from Louisiana Mines to Chicago, 66 ICC 81, page 93; Proportional Rates on Grain and Grain Products, 74 ICC 341, page 343; Sugar Cases of 1922, 81 ICC 448, page 472; Increased Railway Rates, Fares, and Charges, 248 ICC 545, pages 562-571, 609; Consolidated Freight Classification Cases, 262 ICC 447, page 511; New Automobiles in Interstate Commerce, 259 ICC 475, page 555.

[34] General Commodity Rate Increases, 1937, 223 ICC 657, page 744.

[35] Addresses of Wendell Berge, Assistant Attorney General of the United States, of August 7, 1944, before the Kansas City Advertising and Sales Executive Club; address of September 11, 1944, before Town Hall, Inc., Los Angeles; address of September 17, 1944, at Portland, Oregon; address of September 20, 1944, before the Rotary Club, Seattle, Washington; address of September 20, 1944, before the Seattle Bar Association; address of October 25, 1944, before the Wisconsin Farmers Union Convention at Chippewa Falls, Wisconsin; letter to editor of *The New York Times* of August 30, 1944, in reply to an editorial in *The New York Times* of August 25, 1944, regarding the antitrust suit brought at Lincoln, Nebraska, against the railroads; hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, A Bill to Amend the Interstate Commerce Act to Provide for Agreements between Common Carriers by Railroad, etc.; hearings before Senate Committee on Interstate Commerce, 79th Congress, 2nd Session, on HR 2536; *Justice in Transportation*, by Arne C. Wiprud, formerly special assistant to the Attorney General. (The author of this paper reviewed Mr. Wiprud's book in an article entitled, "Rate Making and the Antitrust Law," in the *Railway Age* of August 4, 1945, reprinted in Vol. XII, *ICC Practitioners' Journal*, page 1117.) *Economic Freedom for the West*, by Wendell Berge, and particularly Chapters 10 to 13.

See particularly the late Commissioner Eastman's comments on the attitude of the Department of Justice towards the commission in the statement he made before the Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, pages 877, 878.

[36] *Economic Freedom for the West*, by Wendell Berge, Chapter 11, page 110.

[37] Statement of the late Commissioner Eastman in hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 834; statement of Commissioner Aitchison in hearings before Senate Committee on Interstate Commerce, 79th Congress, 2nd Session, on HR 2536, page 1175.

[38] Forty-fourth annual report, 1930, page 93.

[39] United States *v.* Socony Vacuum Oil Co. 310 US 150, page 221.

[40] Increased Rates, 1910, 20 ICC 243; the Five Per Cent Case, 32 ICC 325; the Fifteen Per Cent Case, 45 ICC 303; Increased Rates, 1920, 58 ICC 220; Reduced Rates 1922, 68 ICC 676; the Fifteen Per Cent Case, 1931, 178 ICC 539, 179 ICC 215, 191 ICC 361; General Rate Level Investigation, 1933, 195 ICC 5; Emergency Freight Charges, 1935, 208 ICC 4, 215 ICC 439, 219 ICC 565; General Commodity Rate Increases, 1937, 223 ICC 657, 229 ICC 435; the Fifteen Per Cent Case, 1937-1938, 226 ICC 41; Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248 ICC 545, 255 ICC 357, 256 ICC 502, 258 ICC 455, 259 ICC 159; Ex Parte No. 162, Increased Railway Rates, Fares, and Charges, 1946, 264 ICC 695.

[41] Urgent Deficiencies Act, October 22, 1913, 28 USC 47, 47a.

[42] Associated Transport, Inc., Control and Consolidation, 38 MCC 137; McLean Trucking Co. *v.* United States, 321 US 67; Interstate Commerce Commission *v.* City of Jersey City, 322 US 503; American Trucking Associations *v.* United States, 56 Fed Supp 394; Inland Waterways Corp. *v.* United States, U. S. District Court, Chicago, July, 1945.

[43] Federal Communications Act of 1934, 47 USC, § 154-609.

[44] Hearings before the Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 830.

[45] Decision of September 27, 1943, in Docket No. 6517, In the Matter of the Application for Merger of the Western Union Telegraph Co. and Postal Telegraph, Inc.

[46] Report of September 25, 1943, to the President; supplemental report of May 29, 1943, to President; report of October 29, 1938, to President.

[47] Hearings before the Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 215.

[48] Hearings before subcommittee of Committee on Interstate and Foreign Commerce, House of Representatives, 79th Congress, 1st Session, pursuant to HR 2536, page 14.

[49] See Note 40.

[50] Carter *v.* Carter Coal Co. 298 US 238, page 331.

[51] Hearings before subcommittee of House Committee on Interstate and Foreign Commerce, 79th Congress, 1st Session, on HR 2536.

[52] Statement of the late Commissioner Eastman in hearings before Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S 942, page 831; statement of Commissioner Aitchison in hearings before Senate Committee on Interstate Commerce, 79th Congress, 2nd Session, on HR 2536, page 1175.

[53] Volume 8, *Encyclopedia of Social Sciences*, page 229, "The Interstate Commerce Commission," I. L. Sharfman.

[54] Address of Chief Justice Hughes at first annual meeting of association of ICC practitioners, annual report of association, Vol. I, page 130.

[55] A bill was passed by the House of Representatives at the last session under which the rate-making procedures of carriers and their rate-making conferences would be subjected to control by the commission. The bill failed of passage in the Senate. (See hearings before a subcommittee of the House Committee on Interstate and Foreign Commerce, 79th Congress, 1st Session, on HR 2536, and Report No. 1212, 79th Congress, 1st Session, to accompany HR 2536; also hearings before the Senate Committee on Interstate Commerce, 79th Congress, 2nd Session, on HR 2536, and Report No. 1511, 79th Congress, 2nd Session, to accompany HR 2536.) The House committee in reporting out this bill said:

> "The situation is one which clearly calls for prompt action by Congress. The problem is one of reconciling and harmonizing two great principles of public policy which have been declared by Congress. One of these principles is embodied in the antitrust laws. These laws, which are enforced by the Department of Justice, apply broadly for the purpose of preventing unlawful restraints upon competition in all fields of interstate trade and commerce. The other principle, applicable in the relatively limited field of transportation in interstate commerce by carriers subject to the Interstate Commerce Act, is found in the National Transportation Policy declared in the Interstate Commerce Act."

The Senate committee in reporting out the bill said in part:

> "The broad purpose and objective of the bill, as reported, is to provide means for removing and avoiding conflict between the National Transportation Policy and the policy of the antitrust laws, and in that way to bring an end to the confusion, uncertainties, and inconsistencies which now threaten serious harm to all interests, and particularly to shippers, who are concerned in an adequate transportation system capable of rendering economical and efficient service to the public under reasonable and nondiscriminatory rates."

Public Utility Problems in the Air Industry

By OSWALD RYAN
VICE CHAIRMAN, CIVIL AERONAUTICS BOARD

In responding to the topic "Public Utility Problems in the Air Industry," I should point out at the outset that, although the Civil Aeronautics Board exercises the regulatory power over several phases of civil aeronautics, in its regulation of the common carriers of the air it is dealing with a public utility industry. For the Civil Aeronautics Act not only declares the commercial air carriers to be common carriers subject to the usual public service obligations, but it also prescribes substantially the same conventional pattern of regulation which has been developed for other public service industries.

Thus, a certificate of public convenience and necessity is required as a condition to entrance into the air transport industry; rates for passengers, property, and mail are subjected to the jurisdiction of the Civil Aeronautics Board; acquisitions of control, mergers, consolidations, and other intercorporate relations are subject to board control; the acts of the scheduled air carriers are regulated; adequate and nondiscriminatory service is required; and unfair methods of competition are proscribed.

But there is one respect in which the Civil Aeronautics Act of 1938 may be said to differ from other regulatory acts: The Civil Aeronautics Act has a developmental as well as a regulatory purpose. The Civil Aeronautics Board is given responsibility for the encouragement and development of an air transportation system, both domestic and foreign, that will be adapted to the needs of our commerce, our postal service, and our national defense. In this instance Congress was dealing with an infant industry which was still in a pioneering stage, an industry declared to be of vital importance not only to commerce and the postal service but to the national security, and it was the purpose of Congress not only to insure to the public adequate transportation service at reasonable cost but also to stimulate the maximum development of civil aviation in the broader national interest.

I might also add that the American airline industry also is distinguishable from most public service industries which are subject to the regulation of a quasi judicial body. I refer to the territorial extent of its operations. The Interstate Commerce Commission in its regulatory task sits with the rail and motor map of the United States before it; the Federal Power Commission in its regulatory function sits with the power and gas map of the country before it; but the United States air-line network, which is the subject of the regulatory responsibility of the Civil Aeronautics Board, covers the map of the world. For our United States scheduled air lines operate not only into all American states, territories, and possessions but extend also into practically every country of the Western Hemisphere, including the islands of the Caribbean; into most of the major countries and many of the smaller countries of Europe, Africa, Asia, and Australasia.

I have spoken of the developmental or promotional responsibility of the board. This developmental function in the past has had a very large influence upon the regulatory policies of the board. The board's primary concern in the past eight years has been the building up of a national network of domestic and international scheduled air transportation. This promotional task will continue for some time to require the attention of the board, for air transportation is still a youthful industry which has not yet achieved its full potential of public service.

Thus, air transportation must not only be extended to many new communities but, as further rate reductions become

possible, it will be extended to many new segments of the traveling public and to new types of services in both the passenger and the cargo fields. But while the board will have a continuing responsibility for enabling these new services to develop and prove their worth, as different areas of the industry come to occupy a more important place in the national economy, it will be increasingly concerned with its regulatory and supervisory responsibilities.

Keeping in mind the subject which has been assigned me, I shall undertake to deal primarily with some of those regulatory policies and problems that have accompanied the development of new routes and services, both domestic and international.

When the Civil Aeronautics Board was established in August, 1938, it took over in addition to our international system the regulation of an operating air transport system that had been built up under air-mail contracts which had been awarded by the Post Office Department. That system consisted of three transcontinental air lines, all three of which operated from coast to coast; another line which linked the Pacific Northwest with the city of Chicago. The system also included a number of north-south lines and a number of large and small regional carriers.

This was the national air transport system which existed when the Civil Aeronautics Board took over in 1938. Pursuant to a "grandfather" clause of the Civil Aeronautics Act, the board issued certificates of public convenience and necessity to all of these carriers on the basis of the fact that they had engaged in air transportation between May 18 and June 23, 1938, and had complied with certain other statutory standards.

Now I want to call your attention to an important characteristic of this domestic air transport system which the Civil Aeronautics Board inherited in 1938: Except for services between important traffic centers such as Chicago and New York, it was essentially a non-competitive route pattern. This was the natural result of the Post Office contract system from which the air transport network of 1938 had derived. In the eight years which have passed since the board was established, this situation has been radically changed by the certification of new routes and services. In passing upon the applications for these new routes, the board has been confronted with a two-fold problem. First, it was necessary to supplement the preëxisting route system to bring air transportation to many communities that were without air service in 1938. And, second, it was necessary to extend new services to communities that already had air transportation—thus introducing a substantial element of competition that had not previously existed. As a result of all this there are today competing services between most of our important centers of population.

As of August 31, 1946, the board had certificated 79,734 miles of domestic routes; 70,542 miles represent service by trunk-line carriers, and of this trunk-line mileage 39,267 miles or 56 per cent had been authorized by the "grandfather" certificates.

In the development of the national air network, the board has acted in response to guiding standards prescribed by Congress. It has sought to develop an air transportation system adequate to the national needs. It has sought to assure adequate and nondiscriminatory service at reasonable charges. It has been under a mandate to recognize and preserve the inherent advantages of air transportation, to maintain the highest attainable degree of safety, to foster sound economic conditions in the industry, and to provide for improved coördination in the services offered.

The board's first concern has naturally been to provide services which would stimulate the development of the full travel potential of our domestic and international markets. We have sought to build a national network which would not only be adequate for existing travel flows but would also facilitate the

development of potential communities of interest where economic intercourse has been hampered by distance, by geographical barriers, or by the inadequacies of surface transportation. The board has sought to make air services direct and expeditious in order to exploit fully the benefits of speed and flexibility in operations. Where the prospective traffic volume justified it, its routes have been extended to improve long-distance services, by providing one-carrier and one-plane services. Where the economic situation has not justified such extensions, the board has stood ready to promote integration and coördination in service by approving agreements for the interchange of equipment between connecting carriers, thereby accomplishing one-plane service.

The Rôle of Competition

ANOTHER major consideration before the board in the establishment of new routes and services has been the proper rôle of competition in the expansion of the national air pattern. This arises from the fact that the board is directed by the congressional act in its decisions to consider that competition will be in the public interest and in accordance with public convenience and necessity to the extent that it may be necessary to assure the sound development of an air transportation system properly adapted to the needs of our commerce, our postal service, and the national defense.

In the realm of private business enterprise the traditional public policy in this country has sought the preservation of free and competitive enterprise. Competition has been regarded as an energizing and vital force, stimulating new ideas and keeping open the door to progress. In the field of public service enterprise, on the other hand, public policy has frequently favored the doctrine of regulated monopoly. Thus, our public utilities—our waterworks, our electric power and gas utilities, our telephones and street railways—have generally been regarded as natural monopolies. This was so because the inherent conditions under which those utilities operate generally make competition economically impracticable and sometimes destructive. In the field of rail transportation the national policy has been since 1920 a policy of limited competition.

The conditions which make public utility enterprise generally unsuitable for competition do not exist in the air transportation industry. The inherent characteristics of air transportation, especially the relatively small amount of capital required in proportion to the volume of the service rendered and its relatively small fixed costs, make this industry peculiarly adapted to a competitive economy. The validity of this conclusion is well documented in the experience of our domestic air lines. The competitive spirit here has been largely responsible for the most amazing air-line development to be found in any nation. Competition among the domestic air lines of the United States in the comparatively short period of their history has produced improved operating methods, better service, and a notable technical development. It is extremely doubtful whether these results could have been realized in the same degree under a policy of regulated monopoly. It is not surprising, therefore, that Congress, with this record of experience before it, should have expressly declared competition in proper circumstances to be in the public interest.

THE competition thus envisaged by the Civil Aeronautics Act, however, is not a destructive or uneconomic competition. The entire scheme of the act reveals a dual purpose of Congress to safeguard air transportation against the economic anarchism of unrestrained competition on the one hand and the deadening effects of monopoly on the other. The Civil Aeronautics Board is directed to put into effect a policy of limited and controlled competition, and it must be governed by this policy in issuing authorizations for new air services.

Now the Civil Aeronautics Act has not laid down any fixed rule or formula for

determining the exact extent of competition that may be required to accomplish the statutory purpose. Any attempt to do that would have been impracticable. But while no convenient formula is available, nevertheless certain general principles may be regarded as useful guides to judgment in any particular case.

Competition to be in the public interest must be an economic competition; that is to say, there must be a sufficient traffic potential to support a competing carrier on any route or the competition will not be justified. There are certain exceptions to this principle. Considerations of national policy affecting the national security, for example, may in a particular case overcome the economic considerations and may justify the establishment of an air service which would not otherwise be supportable. Another situation would arise where the improvement of a long-haul service required the establishment of a single-company service and where competition necessarily resulted on a segment of the route involved. In such a case the competition would constitute an incidental result of the improvement of a through service and would be authorized if no serious impairment of another air carrier were threatened.

THE contention has been advanced at times that competition is not justified under the Civil Aeronautics Act unless it can be shown that the existing carrier fails or refuses to furnish adequate service, or for some reason is unable to do so. This contention, however, misconceives the place which the requirement of adequate service occupies in the statutory scheme. Throughout this statute runs the thread of two fundamental policies—one directed to the achievement of regulatory control over the activities of the air lines, the other directed to the promotional purpose of accomplishing the maximum progress in an industry which is declared to be vitally important to the national interest. The first of these two policies seeks to protect the public users of the transportation service by requiring, among other things, that adequate service shall be rendered. The promotional policy calls, however, for something more than adequate service; it demands an incentive to pioneering and developmental achievement. The Civil Aeronautics Act intends that that incentive shall be supplied by competition. It follows, therefore, that the existence of an adequate service on a particular route would not of itself constitute a bar to the authorization of a competing service, and the board has so held.

The success of any sound policy of competition requires that the competition in so far as possible shall be a balanced competition. And while the accomplishment of a balanced competition among air carriers does not require that all carriers shall be of equal size, it does imply that the carriers shall have an economic size and strength if they are to succeed in the competitive struggle. When the board embarked upon its work of extending and developing the United States air-line network it soon discovered that there was a marked disparity in size and strength between our domestic air carriers. It discovered that about 80 per cent of the business of carrying passengers, property, and mail was handled by four large air lines and that the remaining carriers shared the remaining 20 per cent of the total business. This disparity was primarily due to the fact that the smaller air carriers were operating shorter routes or routes which did not have the traffic density enjoyed by the larger carriers.

NOW the small business unit in the air transportation industry, like the small business unit in most industries, operates under the burden of certain handicaps in competing with large business units. The smaller air carrier has less mileage over which to spread its overhead costs. It finds extremely difficult the most efficient and economical utilization of its aircraft equipment. It frequently bears the burden of excessive financing costs. If we are to achieve a balanced competition in our air transportation, our air carriers should have

sufficient size and strength to enable them to obtain their needed capital on the most economical terms; they must be able to spread their overhead costs over an economical base; they must be in a position to bargain for supplies and services on reasonably even terms with their competitors; and they must be large enough to be able to make the most efficient and economical utilization of their equipment and personnel.

It was such considerations as these that led the board, in its expansion policy, to give to the smaller carriers an opportunity to increase their economic size and strength by granting them new routes whenever such grants were otherwise consistent with the standards of the Civil Aeronautics Act. As a result of this policy the route mileage of the smaller carriers has been substantially increased since 1938 and their economic condition has definitely improved.

State Regulation

VITALLY important among the factors that will affect the future of air commerce within the United States will be the regulation pattern. Thus far the regulation, both economic and safety, of our common carriers of the air has been the function of the Federal government; there has been no significant exercise of state power. Recent proposals, however, contemplate the entrance of the states into the economic regulation of intrastate air commerce. It appears that plans are under way for the presentation of a uniform state regulatory act to the legislatures of some 44 states which will meet during the coming year, and which would impose upon all intrastate and interstate air lines that may be engaged in intrastate commerce a comprehensive economic regulatory pattern similar to that now exercised by the Federal government. This proposed legislation is being sponsored by many state officials who, I firmly believe, are acting in the best of faith and are moved solely by the desire to advance and not to obstruct the further development of air transportation.

We are here confronted with an issue which some of us believe to be one of grave implication to the future of air transportation in the United States: Whether air transportation in the future is to develop under the regulatory control of the national government as in the past, or whether it is to be subjected to the multiple, and possibly conflicting, control of 48 regulatory bodies in addition to the Federal agency.

We cannot reach a sound answer to this problem without taking account of the inherently interstate and national character of air transportation rather than local character. Air transport is a long-distance transportation. The average passenger trip by air in 1943 was 537 miles in length, while the average passenger trip by rail was less than 50 miles in length. It is not without significance that today there is but one federally certificated air line operating in this country whose operations are confined to a single state, and that line operates in the largest state of the Union—Texas—and it carries interstate as well as local traffic. Only in the past two years has there been any development of intrastate air transportation, and it is still an open question whether the economics of this new method of transport will permit the survival of purely local operations that do not involve the carriage of passengers and property moving in interstate commerce.

PERHAPS the primary threat of state economic regulation lies in its potential effect upon the national policy of regulated competition. I have already spoken of the rôle which competition plays in the expansion of our air transport system. If each of the 48 states is to exercise the right to grant certificates of public convenience and necessity to local intrastate air lines, many of which would be operating in competition with the intrastate segments of our interstate air lines, the result is likely to be the economic impairment of our air transport system and an obstruction to its future growth.

This is no reflection upon the state agencies. The interstate and intrastate

activities of an air line are so intermingled that uniformity of regulatory action is an absolute essential to a sound and orderly economic development, and such uniformity is not practicable under a system of multiple control. It is difficult to see how the existing national policy of balanced and controlled competition could be preserved if 49 governments instead of one undertook to regulate that competition. Public regulation under such circumstances could become a crazy quilt of overlapping jurisdictions and inconsistent patterns which would destroy the carefully regulated competitive balance that has been built up under a uniform Federal policy.

It is only in the case of the air line whose operations neither parallel and compete with the interstate carrier nor connect with the interstate carrier in such a way as to carry a substantial volume of interstate commerce that the state authority could regulate through the issuance or denial of certificates without the danger of seriously disrupting the national aviation program. It may be questioned whether many such local operations will exist. Many will doubtless be started, but few will survive in such a restricted area since the economics of the market for air transport services will normally require the local operator to adjust his operations to a market which extends beyond the border of a single state.

ANOTHER illustration of the probable effect of imposing state economic regulation upon our scheduled air lines that carry intrastate as well as interstate commerce may be seen when we apply state control to the intrastate rates of our interstate air lines. Air carriers that operate across state lines, especially where their operations cross 10 or 20 states, as some now do, are not likely to be effectively regulated by the action of the many states through which they pass. The various state regulatory bodies in such a case are not likely ever to be in possession of all the facts with respect to the costs of a far-flung air line. Only an agency with jurisdiction over the entire operations of such a carrier would be in a position effectively to determine the reasonableness of the over-all costs and the propriety of the cost allocations among the different classes of traffic. State regulation under such circumstances presents such complex problems that it is to be hoped that if the states do exert jurisdiction over air carriers they will at least exempt the interstate air lines from such multiple state control.

Finally, there is the financial burden which compliance with multiple regulation would place upon our air carriers. In the years immediately ahead it will be necessary for air transportation to drive steadily and successfully toward lower cost levels if this new industry is to serve a mass transportation market and attain economic stability and security. In this respect, air transportation differs significantly from surface transportation, both rail and highway. There are differences in the volume of operations; differences in the operating margins; the difference in the proportion which local bears to interstate business; differences in the number of separate jurisdictions to which air carriers would be subject—all these combine to disprove any assumed analogy between air transportation and surface transportation as a support for the multiple regulation of air commerce.

ITS amazing capacity for speed and its indifference to the barriers of land and water have enabled air transportation to make the greatest contribution thus far made toward the conquest of time and space. Despite a notable past achievement, this three dimensional transportation now appears to stand at the threshold of its greatest opportunity. Whether that opportunity can be realized depends upon the favorable resolution of several factors, among which will be the public regulation pattern. For air transportation, like all other public service industries, must operate within the framework of public policy, and whether it attains or fails to attain its full capacity for public service will hinge in large part

upon the soundness or unsoundness of that policy. And we must not forget that its ability to overcome the physical barriers of land and water gives no assurance of an ability to surmount political and economic barriers that may be unwisely and unwittingly reared against its progress.

The International Air Network

As I indicated at the beginning, the Civil Aeronautics Board exercises regulatory power not only over the national network which extends throughout the United States but also over a vast and far-flung American air transport system which reaches to our national territories and possessions; to the many countries of the Western Hemisphere, including the islands of the Caribbean; and to many countries in Europe, Asia, Africa, and Australasia. As I said earlier, the board in its regulatory task sits with the map of the world before it.

We have applied substantially the same principles to the development of our international air services as are applicable to the domestic network. When the board took over the regulation of civil aviation in 1938, our international services were conducted by a single company, Pan American Airways, including its associate company, Pan American-Grace. In a series of international route cases, since decided, the board has substantially extended the Pan American route system in Europe, Africa, and Asia. It has authorized two additional services across the North Atlantic, one of which serves a densely populated area of western Europe and the second of which is to serve southern Europe, northern Africa, the countries of the Middle East, and Asia. Another carrier has been certificated to operate the northern route over Alaska and the Aleutians to Japan and China; still another to operate between California and the Hawaiian islands. And in the Latin American area new international routes have been granted to four of our domestic carriers, three to serve the Caribbean area and one to provide a competitive operation to South America. Thus American carrier competition has spread in the foreign field since 1938 until Pan American Airways today is without competition only in its service to Australasia and its service to South Africa.

In cases authorizing the establishment of our international air lines (in which the President of the United States, in effect, sits as the sixth and most important member of the board since his approval is necessary to all international new route decisions), the board is presented with a problem which grows out of a fundamental principle of international air law. That is the doctrine which recognizes that every nation has control over the air space above its own territory and territorial waters. That doctrine of law requires that before any international decision of the Civil Aeronautics Board can be carried out there must be secured from the foreign governments concerned the right to use their air space, to land in their countries for fueling or technical purposes, and the right to discharge or take on passengers and cargo. In the early days of our international air transport, our air carriers directly negotiated with foreign governments in securing such operating rights. Pan American Airways, for example, negotiated more than 60 unilateral contracts with countries in Latin America, the Far East, and Europe. The prevailing policy today, however, has been to obtain the necessary foreign rights through international agreements between the governments concerned.

I now want to call your attention to functions of the Civil Aeronautics Board which are unique in the field of public utility regulation. I refer to the board's statutory function of advising the Secretary of State in connection with international negotiations and the participation of board members in the negotiation of international air agreements and treaties. Here, the board members go beyond the accustomed quasi judicial and legislative functions to discharge a diplomatic task. Thus, in the negotiations with France,

Mexico, and Brazil, the board was represented on the United States delegation by one of its members; in the conference with Canada, the United States delegation contained two board members; several members participated in the recent negotiations with the Argentine and the Netherlands; and in the negotiations which resulted in the agreement between the United States and the United Kingdom at Bermuda last February all members of the board served on the United States delegation.

I WANT to say a word about the position which the United States has maintained in discussions and negotiations with foreign governments for the accomplishment of international aviation agreements. The primary problem which has confronted us in these negotiations has grown out of two fundamentally different philosophies which have been and to a large extent are held by the various countries. Nearly all of the countries with which we sought agreements adhere to a philosophy of restriction in their thinking about international air services. They feared the competitive power of the United States air lines, if allowed to operate without restriction, and they sought to safeguard their own air lines against that competition by insisting upon agreements which would limit the number of schedules and restrict the seating capacity of the international services; and they sought thus to accomplish an equal division of the total traffic between the carriers of the two countries involved in the agreement. In contrast to this policy of restriction, the United States has been the exponent of liberal expansion and has insisted that the air carriers be allowed to operate without the handicap of restrictive formulas.

In the agreement between the United States and Great Britain reached at Bermuda last February—which is probably the most important of the international agreements to which the United States is a party—this policy of liberalism prevailed over the philosophy of restriction. Instead of relying upon formulas to restrict the number of schedules operated or the amount of capacity offered, the Bermuda agreement substituted general principles of fair play to which the two parties pledged themselves to adhere in their international air services.

THE Bermuda agreement has had a definite influence in advancing this policy of freedom subject to regulatory principles as against the policy of restriction implemented by arbitrary formulas; but the issue between these two basic philosophies is by no means settled throughout the world, and the problem is still with us in negotiating with other countries. Thus, for example, the negotiations with Mexico at Mexico City a few months ago had to be suspended because of the inability of the two delegations to reach agreement upon this question. And a few weeks ago a similar impasse occurred for the same reasons in the negotiations between the United States and the Argentine, forcing a suspension of the negotiations. But the United States continues to maintain its position, believing that the advancement of world aviation can only come if the air carriers of the different nations are left free to develop to the maximum the traffic potential. We have been successful in accomplishing some 21 international agreements which are consistent with this principle.

The underlying philosophy of our approach, I think, is well stated in the agreement of Bermuda. That document declares "that the two governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind . . . and to stimulate international air travel as a means of promoting free understanding and good will and insuring as well the many indirect benefits of air transportation to the common welfare of both countries." It is a declaration which dedicates aviation not to the purposes of national politics or prestige, or economic imperialism, but to the principle of service to all mankind. It is the principle which sees the airplane, not as an instru-

ment of destruction, but as a messenger of commerce and peace, aiding the exchange among free peoples of the products of their toil and, what is more important, promoting the exchange of travelers and the exchange of ideas, thereby paving the way to that understanding among nations that is the indispensable condition to a permanent peace.

Labor Disputes and Public Utilities

By DONALD R. RICHBERG
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At the risk of seeming pedantic and perhaps old-fashioned, I shall take for my text an almost forgotten maxim, *"Salus Populi Suprema Lex Est,"* which I have always understood to mean that the welfare of the people is the supreme law. I also understand that this means the welfare of all the people, and that certainly in any democratic form of government the welfare of a class of people should not be given precedence over the welfare of all the rest of the people.

In protection of the general welfare it has been found necessary from time immemorial either to prevent and destroy private monopolies or to subject them to careful and detailed regulation by the government. The right of a public utility to obtain a franchise or to operate has been maintained only on the basis of its acceptance and fulfillment of obligations of public service, which include obligations to serve customers, without discrimination, at reasonable rates and in such a manner as to meet reasonable demands for service without avoidable interruptions of service, and not to abandon an established service without reasonable cause.

For many years it has been assumed, in this country at least, that the obligations imposed on the owners and managers of public utilities and enforced by law were sufficient to protect the welfare of the people dependent upon such public utilities for services regarded as a daily necessity. It has been assumed that the employees of public utilities would not be responsible for interruptions of service, for preventing the utilities from fulfilling their public obligations, or even for compelling increases in public utility rates by forcing the payment of increased wages by mass coercion and intimidation. In recent years, however, the public has learned that labor organizations, relying on special privileges and immunities granted them by law, are able and willing to paralyze public utility services through strikes conducted in flagrant disregard of civil liberties of other people, and with a practical contempt for public rights and the general welfare.

There can be little question that the national and state governments within the fields of their respective jurisdictions can enact legislation restricting or wholly prohibiting labor unions from conducting strikes against public utilities. A body of lawyers should not waste its time debating this issue. In an unanimous opinion of the Supreme Court written by the late Justice Brandeis, it is succinctly stated: "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." (Dorchy *v.* Kansas, 272 US 306, 311.) In a dissenting opinion of Justice Brandeis, in which Justices Holmes and Clarke joined, there is a statement of minimum principles with which all sound lawyers will certainly agree, which reads as follows:

> Because I have come to the conclusion that both the common law of a state and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the com-

munity. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. (Duplex Co. *v.* Deering, 254 US 443, 488.)

WE are confronted not only with threats of more and worse strikes against public utilities, but also with a record of actual suffering and hardship which has been imposed on many large communities through strikes which have in the aggregate deprived millions of people of light, power, fuel, and transportation essential to their well-being. The need for remedial legislation is plain. The questions which should be addressed to the legal profession are: What sort of legislation will be effective to prevent such strikes? This means: What procedures should be established by law for the peaceful and just settlement of labor disputes in public utilities; and how can those who are unwilling to rely on such procedures be prevented from resorting to strikes to enforce their demands?

It is not difficult to outline the procedures which should be established by law which would avoid the necessity or justification for strikes which will interrupt public utility services. But those who advocate such procedures must be able to overcome two varieties of opposition in order to obtain that strong public support for the purposes and methods of a law which will make its enforcement practical and not unduly expensive or difficult.

We need a Federal law and we need state laws of similar design to establish peaceful methods of settling labor disputes. The need for a Federal law is, however, paramount, because it will be necessary for the Congress to amend several Federal statutes which are largely responsible for the growth of labor organizations endowed with economic and political powers so great, and left by law so free from legal responsibility, that they have been able to transform collective bargaining into collective coercion and to make industrial warfare a more profitable enterprise for labor bosses than industrial coöperation.

For this reason, I shall confine my proposals for the peaceful settlement of labor disputes and public utilities to the outline of Federal legislation.

AS a preliminary matter, consideration must be given to the extent of Federal jurisdiction. The present tendency of the Federal government to extend its jurisdiction over many matters of purely local concern should be reversed. The ancient principle of local self-government should be applied so far as practical. It is peculiarly troublesome in labor relations to have them affected by remote controls, whether they proceed from absentee managers, national labor unions, or the national government.

Nevertheless, the existence of big business, big unions, and big problems must be recognized. The public interest in most important economic conflicts is not confined within state lines, and usually only the power and authority of the Federal government can give adequate protection to the general welfare. I think a sound policy in this regard was defined at some length in the proposed Federal Industrial Relations Act (Hatch-Burton-Ball Bill, S 1171) which excluded from Federal jurisdiction "controversies that are predominantly of a local character or effect," and excluded from the commerce subject to national control "such local handling or distribution of consumer goods or end products after termination of their interstate shipment or their importation as does not directly affect such commerce."

Also, let me suggest that a sound Federal labor policy should exclude from Federal handling or interference all controversies which are being dealt with effectively by local agencies, even though they may be within Federal jurisdiction.

Without further discussion of this knotty question, let me turn to the legal processes which should be established by the Federal government for the peaceful settlement of labor disputes.

We can lay aside for the moment the hotly debated issue of compulsory arbitration and consider only the need for

providing by law a machinery of negotiation, mediation, and voluntary arbitration, and then requiring by law that all parties involved in industrial controversies make a reasonable effort to settle their differences through such peaceful, orderly means before beginning to make war on one another. The only weighty opposition to such a law comes from labor unions that object to any restraint whatsoever on their so-called "right to strike." They oppose even the requirement that striking be *deferred* until there has been a reasonable effort to settle through negotiation.

Restricting Strikes

THE arguments in favor of such an unrestricted right to strike are so weak practically and so unsound legally that they should have no influence on a government labor policy. As a practical matter there can be no assurance of industrial peace and no maintenance of an orderly society without the enforcement of legal limitations on the right to strike. Any other government policy would mean a surrender to the anarchistic rule of private force.

As a legal principle we must concede that it is the primary duty of a government to preserve domestic peace and good order. That duty requires a government to establish ways and means for the peaceful settlement of all the inevitable conflicts of interest which arise between citizens. That duty also requires the government to make it a legal obligation of citizens to prosecute their interests through peaceful means and not through organizations of private force. There is no absolute, unqualified "right to strike" which has ever been recognized in the law of this or any other land. No such right could be recognized without transforming the field of government, wherein the public interest is sustained by public force, into a battlefield of warring tribes fighting with private forces to advance private interests.

We must deal, however, with a much more difficult question of public policy, when we face the problem of labor disputes which have remained unsettled after a genuine effort to reach a negotiated settlement—disputes which threaten stoppages of production that will impose serious hardship on substantial numbers of innocent people. There is only one answer to this problem in a government labor policy that does not confess impotence to protect the public interest. That answer is that, under such circumstances, industrial disputants who cannot agree upon the terms of their coöperation, but whose continuous coöperation is essential to the general welfare, should be willing, and, if necessary, compelled, to accept the decision of their dispute by an impartial public tribunal.

Compulsory Arbitration

IF you are one of those slogan-ruled persons who shudder and shrivel at the words "compulsory arbitration," just relieve your tremors by advocating an "administration of justice under the law." This is the sweet-sounding description of that compulsory arbitration of disputes which has been accepted for centuries as essential to the maintenance of a civilized society.

You and I may have a violent disagreement over whether you will sell me goods that I need urgently at a price that I can pay. But I am not permitted to organize a gang to compel you to sell to me, or to prevent you from selling to anyone else. If I have a contract right I can sue you. If there is competition I can deal with others. If you have a monopoly I can call upon the government to break it. But, even though my livelihood and everything dear to me depend upon getting you to agree with me, I cannot use force, intimidation, and extortion as the means to save myself.

A man and wife separate; and custody of the children becomes the most precious and priceless desire in the world —far more important than any wage increase. But neither father nor mother is legally free to settle their dispute by force. They must submit to a compulsory arbitration—the binding decision of a court.

An automobile knocks down a pedestrian who may be crippled for life. But the law does not permit the injured man to collect damages with a gun, or to besiege the driver's home and intimidate him into a settlement. There is a compulsory arbitration required by law through which one man may be compelled to pay, or another may be denied, compensation for a ruined life.

If there were a law compelling the arbitration of all unsettled labor disputes and forbidding all strikes, that law would simply extend an essential process of civilization into the one remaining field of social conflict wherein men are now permitted to settle their differences by force and violence.

BUT it is not necessary to advocate such a law. We can tolerate economic battles and even physical violence within limited areas wherein losses and suffering will be confined largely to the fighters, and little public discomfort or hardship will result. We need not strain ourselves in an effort to become wholly civilized, all at once.

Sometimes it seems that there are several million persons in the United States today who only wear the clothes of civilization and try to talk its language, but who, underneath, have the brutish desires and low selfishness of their savage ancestors. When such persons come in conflict it may not be altogether wrong to let them slug it out, so long as they don't disturb or harass their innocent neighbors. It is always difficult to enforce any law designed to require men and women to behave better than they are willing to behave.

It is, however, practical to require by law that all persons conform to the minimum standards of good conduct which a strong majority opinion approves. And so I believe it is practical now to enact laws which will require the peaceful settlement of all economic conflicts which ought to be speedily decided in order to avoid serious injury to the public.

It should be generally agreed that, where voluntary agreements cannot be reached, and unsettled labor disputes in public utilities threaten a serious stoppage of an essential service, the parties should be required by law to submit their controversy to the binding decision of an impartial public tribunal. There should be little objection from the managers and owners of public utilities, since their rates, services, and accounting are regulated by law and they are not at liberty to abandon their public obligations. There can be no sound objection from employees who are intelligent enough to understand that when they rely upon a public utility for their livelihood the public has a right to rely upon them to make every reasonable effort to maintain continuous service.

THERE is no involuntary servitude which would result from denying men a right to strike. Each employee is at liberty as an individual to quit his job. He cannot be compelled to work against his will. A strike is the concerted action of employees who do not intend, or wish, to leave their employment, but who are seeking to compel the employer to continue their employment upon what they regard as more advantageous terms. When the employer is practically the agent of the public, authorized by government to render a public service, a concerted effort to compel him to yield to private demands is almost exactly on a par with a strike of government employees against their government.

The principle that public employees shall not be permitted to strike against their government is already written into Federal law, and has had, except in the ranks of radical trouble makers, general acceptance. Yet it should be obvious that a strike of the employees of the Department of Commerce or the Interior Department would be unlikely to do any such harm to public interests as a strike, for example, of the employees of a single electric power and light company. A strike against a public utility should be treated not only as a strike against the public, but also as a strike against the government.

However, new Federal legislation must go far beyond a law merely applicable to the employees of public utilities. It has been the evil result of Federal labor law to endow all labor organizations with extraordinary powers and freedoms which have been flagrantly abused. These special privileges must be curtailed and public responsibilities must be imposed upon and accepted by labor unions before there can be any prospect of industrial peace. But we can hardly expect that the employees of public utilities will accept and fulfill their public obligations so long as the workers in other fields of private industry are left entirely free from *any* legal obligations or restraints upon the use of their coercive powers to advance their selfish interests, regardless of the public interest.

FURTHERMORE, amendments that are urgently needed to several Federal laws could not be properly, even if constitutionally, made applicable only to one class of workers. The need to amend the Wagner Act is clear. The favoritism of labor organizations written into the Wagner Act had little justification, and has wrought infinite harm in labor relations. Consider, for example, the legal requirement that employers must bargain collectively, and the deliberate omission of any corresponding requirement that their employees should also bargain collectively. Such rank partiality in a law must be abhorrent to anyone with the slightest sense of fair play. The vicious result of this partiality is known to all. Employers have been compelled to attempt to bargain with labor unions that strike without notice or, by arbitrary, unyielding demands, have made a farce of bargaining.

The labor unions were entitled to protection from unfair labor practices by employers, which would inevitably lead to injustice and disorder if the wage earners could only obtain relief through militant action. But any law, such as the Wagner Act, for the ostensible purpose of promoting industrial peace and collective bargaining should have protected employers at the same time against notoriously unfair practices of labor and should have left employers as free as their employees to exercise their civil liberties. It should have imposed an equal duty upon the labor unions as well as upon the employers to bargain collectively.

The one-sided Wagner Act, by investing labor organizations with legal aid in the coercion of employers and by tying the hands of employers with legal prohibitions and indefinite penalties, has had the effect of encouraging labor unions to substitute collective coercion for collective bargaining. If they were weak, they could utilize strikes, demagogic demands, and legal proceedings against employers as the means to organize and to compel consideration of unreasonable demands. If they were strong, they were under no obligation to bargain or to give due consideration to public or private interests. They could simply strike without notice and in large numbers, even for petty causes, and they were apparently supported in such conduct by the law and its administrators.

There are those who would simply repeal the Wagner Act on the ground that labor no longer needs its protections. But a sound government policy should support the amendment of the act to protect employers against the host of unfair practices indulged in by labor unions and to protect labor unions from any revival of unfair practices which have been utilized by employers in the past.

Legalized Labor Monopolies

THE wholesale exemption of labor unions from the prohibitions and penalties of the antitrust laws has created a legalized monopoly power, which, if unchecked, will make the maintenance of a free economy impossible. Labor organizations should have no more immunity than business organizations from prohibitions of monopolistic practices and controls. There should be a definite exemption of both management organizations and labor organizations from any denial in the antitrust laws of a right to coöperate and to make agreements where

the public interest is served and not harmed, even though these agreements may have some influence upon prices and production and be technically construed as monopolistic.

Of course the fixing of standardized wages on a large scale definitely affects prices far more than some business agreements which have been prohibited as being in restraint of trade. Nevertheless, the freedom of organized labor to bargain for wages should be preserved. In the same way, the establishment of conditions of employment, particularly those involving the amount and character of work done, has a monopolistic tendency. Nevertheless labor organizations must be free to bargain and to make agreements covering such matters to the extent necessary to protect the legitimate interests of their members.

But when labor organizations go beyond bargaining for wages and working conditions in a competitive industrial system, and undertake to establish absolute controls over wages, and thereby over prices and production, they begin the exercise of monopolistic powers, which, if unrestrained, must destroy a free economy.

The Closed Shop

THE control of a labor supply through a closed shop, covering not merely individual plants but an entire industry, means the creation of an intolerable monopoly power. This might be partly modified by the requirement, which recently had judicial sanction, that a closed shop can only be maintained by an open union; that is, one open to all employees or would-be employees on like terms. But even when so qualified, there is a grave menace to public interests in permitting any organization to obtain and exercise such a complete control over the labor supply as to make possible an absolute dictation to employers and a resulting monopolistic control over the production and pricing of goods and services.

It is doubtful whether a sound government labor policy can accept the legality of closed shop agreements applicable to an entire industry. We have seen far too often how this power can be abused and used as a means of preventing the government from giving necessary protection to vital public interests.

It is, moreover, hardly debatable that those monopoly devices of labor organizations, whereby business competition is completely eliminated in geographical areas or industrial fields, such as the electrical workers' agreements which closed the New York markets to outside employers, cannot be tolerated. Such arbitrary restraints of trade are so plainly contrary to the public interest that the legislative branch of the government should speedily follow the recent suggestion of the Supreme Court (Allen Bradley Co. *v.* Local Union No. 3, 89 L ed 1441) and bring all such business monopolies, established under cover of trade union agreements, within the prohibitions of the antitrust laws.

Judicial Powers of Law Enforcement

IN connection with these checks upon abuses of power by labor organizations, it should also be a government policy to apply to labor organizations all the processes of law enforcement that are used against other lawbreakers. Specifically, it should be made clear by law that, even though restraints on the injunctive powers of the Federal courts may be found desirable in private litigations, the government does not deprive itself of the ability to invoke all the equitable and criminal powers of the Federal courts for the enforcement of the Federal laws.

It should be apparent, from what I have said about revisions of the Wagner Act, the antitrust laws, the closed shop, and judicial powers of law enforcement, that we cannot seek to provide adequate means for the peaceful settlement of labor disputes in public utilities without at the same time revising our labor law in its application to all industries so as to establish new principles and policies affecting the powers and responsibilities of all labor unions.

It is not necessary and it may not be

desirable to require the compulsory arbitration of all unsettled disputes, even including those which threaten to result in strikes which will do a great deal of harm to a large number of innocent people. On the other hand, we should realize, first, that there are many industries in which continuous production and distribution are as essential to the general welfare as the continuous rendering of public utility services. For example, the stoppage of food supplies through stoppage of production or transportation may cause incalculable suffering. Private transportation may bring products directly to the markets or bring them to the railroads and from the railroads to the markets. A paralysis of such transportation will have the same effect as a paralysis of railroad transportation.

ALSO, we should realize that the utilities themselves are dependent frequently upon private industries for essential supplies. This was vividly illustrated when the coal strike threatened and brought about a shutdown of electric plants depending on coal for fuel.

We cannot isolate the problem of maintaining the continuous operation of public utilities from the problem of maintaining the continuous operation of other essential industries. But perhaps it is easier to explain the needs of the public for public utility service and also the public responsibilities which should be accepted by public utility employees as well as by owners and managers.

Lawyers representing all concerned—the labor unions, the employers, and the government—would render valuable aid in the solution of the problems of labor relations if they would face squarely the need of, first, providing a machinery for the prompt and just settlement of labor disputes by voluntary action, and, then, the machinery for compulsory arbitration of unsettled disputes of any public consequence. They would find ample precedents for the establishment of impartial tribunals in the age-old development of the present varied procedures for the administration of justice. They would also find a fertile field for research, hard thinking, and ingenuity in trying to establish standards of economic justice which could be applied in industrial arbitrations so as to avoid the uncertainties and injustices of judgments arrived at largely "by guess and by gosh."

However, arbitrators of labor disputes should rely mainly on standards of wages and working conditions created by free negotiation and voluntary agreements. If compulsory arbitration were the rule, rather than the exception, it would be inevitable that rather arbitrary governmental standards or political standards would be employed.

But, if genuine collective bargaining is established as the rule in industry, and both management and labor remain free and competitive, one may be sure that the major part of industrial disputes will be determined by agreements. Then, what might be called "prevailing standards" would be available for the aid of public arbitrators in a limited number of compulsory arbitrations. It would, however, help not only in public arbitrations, but in the negotiation of agreements between employers and employees, if we were able to see more clearly, and to have more general agreement upon, the principles which should determine a fair wage and reasonable working conditions.

THIS is not the time and place for the exploration of that vast field of political economy. The lawyers of the nation may well devote their primary attention to reëstablishing the validity of the ancient maxim to which I referred in the beginning of this talk. The welfare of the people demands an end to industrial warfare as the means of settling differences and conflicts of interest between employers and employees. Lawyers should know better than any other body of citizens that the way to establish domestic peace and good order is to establish peaceful procedures for the settlement of private disputes and then to require all citizens to utilize those procedures and to stifle any impulses to resort to the barbaric method of settling their

differences of opinion with a club.

Of course, lawyers will differ indefinitely as to the details of a Federal law which would provide a workable machinery for the voluntary adjustment of those labor disputes which should come within Federal jurisdiction. But, if the principles which I have been seeking to outline were once accepted, there would be comparatively little difficulty in drafting a reasonable and practical law. I am convinced from a rather long experience that the present obstacles to such a law arise not so much from deep-seated differences over methods as from a deep-seated secretive opposition in many places to a principle which cannot be openly repudiated. That is the principle that both employers and employees engaged in industries upon which the public welfare depends should accept and fulfill legal obligations to maintain the continuous production of goods and services, even at the sacrifice of a little of self-interest—or, may I say, even at the sacrifice of a small amount of the sacred freedom of an American citizen to make a private gain out of a public loss.

Nourishing Free Enterprise

"PRIVATE *enterprise business will need additional capital in great amounts provided it gets itself sufficiently free of political interference and labor disputes to bend all its energies to its own job of meeting the nation's abnormally piled-up demand for goods and services. We think this assumption may safely be made. Hangover emergency controls are disintegrating and are being progressively surrendered. Wage disputes, present and prospective, are a more serious matter. But such controversies always have been adjusted in some workable fashion. Making due allowance for the newly acquired power of organized labor, it is reasonable to expect that industries will find their way out of them again.*

"It remains to ask where the needed billions of capital are to be found. Production is, of course, the source from which the stream of new capital rises. The National Industrial Conference Board reports a decline in aggregate corporation profits during the first half of 1946 as compared with 1945. Where profits increased, they did so because of lower taxes, greater production and sales, and rising efficiency. . . .

"Smaller business profits mean smaller individual incomes for the higher income groups, where the bulk of savings—the creation of new capital—is customarily effected. So declining profits shrink the stream of new capital in two ways, by reducing the retained profits of firms and corporations and narrowing the margin of individual savings.

" . . . And here our argument reaches its point, which is that it will be necessary for the government to retire from the capital market if the needs of private business are to be satisfied without a second and more corrupting recourse to credit inflation.

"Not only should the government cease its demands for capital, to be used largely in economically unproductive ways; it should also retire its debt from the commercial banks, leaving them . . . more capable of financing expanded production."

—EDITORIAL STATEMENT,
The Wall Street Journal.

VOLUME 65 PUR(NS) NUMBER 4

PREPRINTS

OF CASES TO APPEAR IN

Public Utilities Reports

COMPRISING THE MORE IMPORTANT DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

Boston Consol. Gas Co., Re ..... (Mass) 142
Cambridge Electric Light Co., Re ..... (Mass) 158
Clifford, Re ..... (Mass) 142
Hope Nat. Gas Co., Re ..... (FPC) 137
Lockport, Re ..... (FPC) 156
Lycoming Teleph. Co., Re ..... (Pa) 129
Park Falls, Re ..... (Wis) 140
Wisconsin Teleph. Co., Slotten v. ..... (Wis) 138
Womelsdorf, Re ..... (Pa) 135

INDEX

Accounting—grouping of gas lines, 137.

Consolidation, merger, and sale—widely separated telephone utilities, 129.

Municipal plants—inspection of sellers' books upon municipal acquisition, 135.

Rates—amendment of gas rate contract, 142; company practices under fuel clause, 142; effect of Price Control Act, 142; flat minimum water rates, 140; fuel charges of gas company, 142; jurisdiction of Commission, 142; retroactive orders, 142; right to file new schedule, 142.

Reparation—Commission power, 142; remedy for overcharge, 142.

Security issues—financing of utility purchase, 129; overcapitalization, 129; financing plant replacement, 158.

Service—duty to extend service, 138; rate factor, 129.

Water—diversion for hydroelectric project, 156.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Lycoming Telephone Company et al.

Application Docket No. 66585, Folders 1, 2, and 3 and
Securities Certificate 525
September 17, 1946

APPLICATION *by telephone company for right to render telephone service in a new area and for approval of the transfer of all property and rights of company which formerly served that area; approved.*

Security issues, § 87 — Financing of utility purchase — Overcapitalization.

1. The issuance of stock to effect a utility consolidation is not warranted where it would result in overcapitalization of the merging company, p. 132.

Consolidation, merger, and sale, § 18 — Widely separated telephone utilities — Improvement in service.

2. Commission approval may be given to the consolidation of telephone utilities, even though they cannot be physically integrated into one system and are serving territories and subscribers that obviously do not have a community of interest, where an immediate and substantial improvement in service will result from such consolidation, p. 132.

Service, § 117 — Commission duty — Subordination of rate consideration.

3. Real or potential impediments to the fixing of fair rates for service must not be allowed to prevent the public from getting the service, since of the two Commission duties, to compel adequate service and to see that utility rates are fair and reasonable, the service consideration is of paramount importance, p. 133.

Consolidation, merger, and sale, § 19 — Public benefit.

Discussion of the general rule that where no foreseeable substantial benefit would accrue to the public from a consolidation of widely separated utilities, Commission approval should be withheld, p. 132.

By the COMMISSION: Lycoming Telephone Company (Lycoming), which furnishes telephone service to the public in parts of Lycoming county, proposes to acquire all the property and franchises of Berks and Lehigh Telephone & Telegraph Company (Berks-Lehigh), which operates in three townships in Berks and Lehigh counties. Approval of the transfer of the property and franchises, and of the abandonment of service by Berks-Lehigh, is sought at A.66585, Folder 3. So that its charter territory may include the territory now served by Berks-Lehigh, Lycoming proposes to amend its charter so as to include in its charter territory the portions of the townships of Albany and Greenwich, Berks county, and the portion of

the township of Lynn, Lehigh county, enclosed by the heavy, solid white line on Exhibit A to the amendment to A.66585, Folder 1, being an application of Lycoming for approval of said amendment to its charter. Approval of the beginning by Lycoming of the exercise of the right to furnish telephone service in said townships in Berks and Lehigh counties is asked at A.66585, Folder 2. At S. C. 525 we are asked to register a securities certificate of Lycoming with respect to the issuance of $4,000 par value of common capital stock to provide funds for payment for the property and franchises of Berks-Lehigh.

The reasons for the transfer of the property and franchises of Berks-Lehigh to Lycoming are given in A.-66585, Folder 3, as follows:

18. That the proposed transfer will not adversely affect the public utility telephone service now conducted by transferor in the area throughout which it has a franchise to operate, and will, in fact, after transferee has expended moneys for improvements which is its intention to do, materially improve the service over that given by the transferor, which fact should be to the benefit of the public served in the area affected.

19. That the transfer will not affect the rates of service to the customers to be transferred.

. . . .

21. The reasons for the proposed transfer are that the officers, directors, and stockholders of the transferor company wish to terminate the operation of this company and wish to sell their interest therein, and the transferee wishes to acquire the transferor's assets, lines, and system to add to that of its own and feels that it can materially benefit the subscribers in any territory by its expansion, and for the reason that the transferee feels that it can materially improve the condition in transferor's territory with resultant benefit to the consumers served in that area.

No protest against approval of the transfer or of the matters collateral thereto was entered at the hearing in Reading or otherwise.

Lycoming was incorporated on March 29, 1945. On or about that date it acquired, with our approval given by orders dated March 26, 1945, the properties of Ralston Telephone and Telegraph Company and Henry L. Winton. It presently furnishes telephone service to the public in parts of Lycoming county, including the townships of Plunketts Creek, Eldred, Upper Fairfield, Hepburn, Loyalsock, Fairfield, Lewis McIntyre, Cascade, and Gamble. It has about 455 subscribers. It is controlled, through majority stock ownership, by Ralph M. Hyle, Long Island City, N. Y., whose brother, Lewis C. Hyle, Trout Run, Pa., also has a substantial stock interest. Ralph M. Hyle is president of the company, and Lewis C. Hyle is treasurer and manager.

Berks-Lehigh, as we have said, furnishes telephone service in parts of the townships of Albany and Greenwich, Berks county, and in part of the township of Lynn, Lehigh county. It has about 172 subscribers.

The territories of the two companies, at their closest approach to each other, are about 115 air-line miles apart. Because of this, and because there is no community of interest between the subscribers of the

two systems, the construction of a line to connect them, it was testified, would be uneconomical and unfeasible. The Berks-Lehigh system would be integrated with the Lycoming system by "management and supervision." The manager of Lycoming, Lewis C. Hyle, plans on being in the Berks-Lehigh territory a minimum of one week every month, and when he is not there he will have somebody there to "maintain and operate" the Berks-Lehigh property. Ownership and operation of the two systems by Lycoming, Mr. Hyle testified, will result in "a general improvement in service," to the benefit of the subscribers of both systems, for "They will benefit from the experience (sic) of labor and material purchases." No estimate was submitted of the amount of such annual operating economies expected.

As a matter of fact, Lycoming has been managing the Berks-Lehigh system since September 30, 1945. The apparent reason for this is explained as follows by Mr. Hyle:

Q. Mr. Hyle, what do you have to say with respect to the officials of the Berks and Lehigh Telephone and Telegraph Company before the Lycoming Telephone Company commenced to operate this system and what do you have to say with respect to the necessity for this acquisition in order to protect the subscribers?

A. Well, originally, they were business people who organized the telephone system for their own advantage. They were not telephone people. They preferred to operate their own business in preference to the telephone business. Their difficulties came when their maintenance men left. The place where they had their switchboard equipment was taken away from them. They failed to operate. We secured a new place and furnished a central office operation.

Q. When those conditions arose, what happened to the company? When the switchboard operator left, what was the condition of the company? What would have been the condition of the company imminently?

A. It all depends upon what they would have been able to do. Undoubtedly someone would have to take over in order to keep it going.

Under Lycoming's management, Mr. Hyle further testified, "The services (of Berks-Lehigh) have been placed in a new exchange building. Pole and line replacements have already been made. General reconstruction will take place and the type of service will be changed." The cost of the changes made and the estimated cost of those yet to be made, were not stated.

Transfer of the property of Berks-Lehigh to Lycoming, the record states, will not affect the rates for service to the subscribers to be transferred. The annual rates of Berks-Lehigh and the rates of Lycoming for comparable service are shown in table on page 133.

Lycoming, as has been said proposes to acquire the property of Berks-Lehigh for a cash consideration of $4,000, the cash to be obtained by the sale of $4,000 par value of Lycoming's common stock to its principal stockholder, Ralph M. Hyle, of Long Island City, N. Y. The incidental costs of acquisition thus far amount to $229.80, making the total cost of acquisition, as presently known, $4,229.80. This is to be compared with the es-

timated original cost of the property to be acquired, as follows:

Estimated original cost of telephone plant in service	$22,239.56
Less depreciation reserve	17,863.15
Depreciated original cost (estimated) of telephone plant in service	4,376.41
Add materials and supplies	594.96
Depreciated original cost (estimated) of all property to be acquired	4,971.37
Cost of acquisition	4,229.80
Excess of depreciated original cost (estimated) of property to be acquired over cost of acquisition, which Lycoming proposes to credit to telephone plant acquisition adjustment	$741.57

The original cost was estimated, because of the lack of adequate records, by Alvin W. Sponagle & Company, certified public accountants, Reading, Pennsylvania. The Sponagle firm inventoried the property with the help of a Berks-Lehigh employee, and priced the inventory largely on the basis of prices experienced by Lycoming's predecessor companies. The Sponagle firm avers that it was conservative in its statements of costs and liberal in providing for the reserve for depreciation.

[1] The purchase price appears to be reasonable, but the issuance of $4,000 par value of stock to finance the purchase is not warranted in view of the fact that Lycoming is overcapitalized (using figures as of September 30, 1945) and would be overcapitalized after the issuance of said $4,000 par value of stock. This is demonstrated as follows:

Present capitalization:		
Common stock outstanding—par value	$20,000	
Subscriptions to common stock	10,000	
Total common stock liability	30,000	
Add common stock proposed to be issued	4,000	
Total present and proposed common stock liability		$34,000
Capitalizable assets:		
Fixed assets less reserve for depreciation—Lycoming	$24,294	
Fixed assets of Berks-Lehigh proposed to be acquired	3,635	
Incidental costs of acquisition	230	
Total present and proposed fixed assets	28,159	
Working capital:		
Materials and supplies—Lycoming	843	
Materials and supplies—Berks-Lehigh	595	
Cash working capital (2 months' out-of-pocket operating expenses of Lycoming and Berks-Lehigh as consolidated; that is, operating expenses less depreciation and taxes)	2,800	
Total capitalizable assets		32,397
Overcapitalization		$1,603

It is evident from this computation that not more than $2,400 par value of stock should be presently issued to finance the purchase of the property of Berks-Lehigh. The remaining $1,600 of the consideration of $4,000 could be temporarily financed by a demand or short-term loan from Ralph M. Hyle, majority stockholder. The $1,600 loan could be repaid by the issuance of $1,600 par value of stock to Hyle when the ratio of Lycoming's capitalization to its capitalizable assets shall have improved to the extent warranting the issuance of such additional par value of stock.

[2] Aside from this small, easily taken-care-of matter, the only matter which gives us concern is the fundamental proposal to vest in one company the ownership and operation of two telephone properties which are 115 miles apart, which admittedly can-

not be physically integrated into one system, and which serve territories and subscribers that obviously and admittedly do not constitute a community of interest. We have several times gone on record as opposed to similar consolidations where no substantial benefits to the public, in the way of rate reductions or improved service, would accrue in the foreseeable future. Our opposition was based on the grounds that if any such consolidation were consummated and an attempt made to keep separate the costs of operation in the respective areas, such separation would be based, in substantial part, on assumptions, so that any desired result of allocation could be obtained, and determination by us of proper rates for the two areas would be rendered difficult if not impossible. Re Pennsylvania Water Service Co. (1927) 8 Pa PSCR 705, PUR1927E 656; Re Northern Pennsylvania Power Co. and Metropolitan Edison Co. (1937) 17 Pa PUC 155, 18 PUR(NS) 265; (1938) 132 Pa Super Ct 178, 24 PUR(NS) 443, 200 Atl 866; (1939) 333 Pa 265, 27 PUR(NS) 233, 5 A2d 133; and Re Pennsylvania Community Teleph. Co. (1942) 24 Pa PUC 29, 45 PUR(NS) 16.

The case at hand, however, differs from the cited cases in that here an immediate, substantial improvement in service to the Berks-Lehigh subscribers not only is promised but actually has been effected. Berks-Lehigh had lost its maintenance men and its exchange building, and had ceased to operate. Lycoming stepped in, obtained a new exchange building, and provided service.

[3] It is our duty to see, first, that the public gets adequate service and, secondly, that service is furnished at fair and reasonable rates. But service is of paramount importance. Real or potential impediments to the fixing of fair rates for service must not be allowed to prevent the public from getting the service. The rate-making bridge, however difficult of passage,

	Berks-Lehigh	Loyalsock exchange	Lycoming Trout Run exchange	Williamsport exchange of Bell Tel. Co.*
Individual line:				
Business	$40.00	$42.00	$42.00	
Residence	40.00	30.00	30.00	
2-party line:				
Business	33.00	None	None	
Residence	33.00	None	None	
4-party line:				
Business	28.00	30.00	30.00	
Residence	28.00	24.00	24.00	
Multi-party line:				
Business	24.00	30.00	30.00	$27.00*
Residence	24.00	24.00	22.20	27.00*

Mileage Charges—Berks-Lehigh: For each ¼ mile, or fraction thereof, beyond the base rate area, $3 per annum for individual line, $2 for 2-party line, $1 for 4-party line, and no charge for multi-party line. Lycoming: $6 for individual line, $2.40 for 4-party line, and no charge for multiparty line. Multiparty-line service given by Lycoming only outside a base rate area but within the local service area.

* Switching for certain multiparty-line subscribers of Lycoming is done by The Bell Telephone Company of Pennsylvania through its Williamsport exchange.

can be crossed when we come to it.

The applications before us accordingly will be approved, subject to appropriate record-keeping conditions, and the securities certificate will be registered in part.

Needless to say, our action here is not a recession from the position which we took in the cases cited above. That position we still think is sound where no foreseeable substantial benefits would accrue to the public from a consolidation of widely separated utility properties having its genesis in the desire of a utility investor to carry all his investment eggs in one basket.

The matters and things involved in the applications and securities certificate having been duly presented and heard, and full consideration having been given thereto, we find and determine that it is necessary or proper for the service, accommodation, convenience, or safety of the public that certificates of public convenience issue evidencing our approval of (1) an amendment to the charter of Lycoming Telephone Company extending its charter territory to include the portions of the townships of Albany and Greenwich, Berks county, and the portion of the township of Lynn, Lehigh county, enclosed by the heavy, solid white line on Exhibit A to the amendment to A.66585, Folder 1, being an application of said company for approval of said amendment to its charter; (2) the beginning of the exercise by said company of the right, power, or privilege of supplying telephone service to the public in said portions of said townships; (3) the transfer by sale to said company of all the property and rights of Berks and Lehigh Telephone & Telegraph Company; and (4) the abandonment of telephone service by said Berks and Lehigh Telephone & Telegraph Company; and we further find and determine that the issuance by said Lycoming Telephone Company of $2,400 par value of common capital stock, as proposed in Securities Certificate No. 525, is necessary or proper for the present and probable future capital needs of said company, but that the issuance of common capital stock of a par value in excess of $2,400 is not necessary or proper for the present and probable future capital needs of said company; therefore,

It is *ordered:*

1. That (a) said amendment to the charter of Lycoming Telephone Company, (b) the beginning by said company of the exercise of the right, power, or privilege of supplying telephone service to the public in said portions of said townships, (c) the transfer by sale to said company of all the property and rights of Berks and Lehigh Telephone & Telegraph Company, and (d) the abandonment of telephone service by said Berks and Lehigh Telephone & Telegraph Company, be and are hereby approved, and that certificates of public convenience issue evidencing approval.

2. That Securities Certificate No. 525 of said Lycoming Telephone Company be and is hereby registered in so far as it relates to the issuance of $2,400 par value of common capital stock, but be and is hereby rejected, without prejudice, in so far as it relates to the issuance of common capital stock in excess of $2,400 par value.

3. That, beginning October 1, 1946,

Lycoming Telephone Company create, for accounting purposes, a Lycoming Division and a Berks-Lehigh Division, and appropriately subdivide the following accounts: Telephone plant accounts, depreciation and amortization reserve accounts, operating revenue accounts, maintenance expense accounts, depreciation and amortization expense accounts, traffic expenses accounts, and commercial expenses accounts.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Borough of Womelsdorf

Application Docket No. 66012
August 19, 1946

APPLICATION *of municipality for approval of acquisition of and right to operate water company's facilities; water company order to submit books to municipality for purpose of determining price payable.*

Municipal plants, § 26 — Acquisition — Inspection of sellers' books.

A municipality seeking authority to acquire and to operate a water company's facilities may have access to the company's books for the purpose of determining the price payable, and a mandamus proceeding is no longer necessary for such purpose.

By the COMMISSION: The borough of Womelsdorf (Borough) has filed its application under § 202(e) of the Public Utility Law for a certificate of public convenience evidencing our approval of the acquisition by the borough of the works, plant and property of the Womelsdorf Consolidated Water Company (Water Company) pursuant to Clause 7 of the 34th Section of the Corporation Act of April 20, 1874, P. L. 95 (15 P S 1353) which provides as follows:

"It shall be lawful, at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city, or district in which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon at the rate of 10 per centum per annum, deducting from said interest all dividends theretofore declared."

Borough avers that information as to net cost of erecting and maintaining the works, and the dividends declared are in the sole and exclusive possession of Water Company, and that Borough has made numerous requests upon Water Company to permit representatives of Borough to examine the books, records, and property of Water

Company. Borough further contends that this information is necessary in order to properly present their case.

In Williamsport v. Citizens' Water & Gas Co. (1911) 232 Pa 232, 81 Atl 316, the supreme court, in outlining the procedure under the provisions of the act of 1874, held that where the municipality shows borrowing capacity approximating the probable price it may have to pay, a mandamus will issue requiring Water Company to submit its books, papers, etc., to the municipality for the purpose of estimating the price payable. In Waynesboro Water Co. v. Public Service Commission (1922) 78 Pa Super Ct 143, the superior court held that, under Art III § 3(d) of the Public Service Company Law, it was necessary for the Borough to obtain a certificate of public convenience from the Public Service Commission, and that such action took the place of the former procedure for preliminary mandamus, which was available to ascertain the price payable.

In Pottstown v. Public Utility Commission (1941) 144 Pa Super Ct 220, 39 PUR(NS) 160, 19 A2d 610, the superior court held that the necessity for Commission approval of the acquisition by a municipal corporation of the works, plant, and property of a water company, under Clause 7 of the 34th Section of the act of 1874 was not abrogated by the Public Utility Law, but was shifted to § 202(e) and that the procedure as outlined in the Waynesboro Case, *supra,* is still the procedure to be followed.

In order for the borough of Womelsdorf to obtain all pertinent and relevant information that it may prepare its case, it will be necessary for the borough of Womelsdorf to have access to the books and records of the Womelsdorf Consolidated Water Company; therefore,

It is *ordered:*

1. That the Womelsdorf Consolidated Water Company permit the borough of Womelsdorf or its duly authorized representatives to have access to the books and records of the Womelsdorf Consolidated Water Company for the purpose of securing the data of cost and maintenance of Womelsdorf Consolidated Water Company's works and property, the total amount of earnings, and the dates and amounts of dividends by it heretofore declared, and if desired, to make a physical examination of its works and its property.

2. That such examination or examinations by the borough of Womelsdorf shall be made at any reasonable time or times.

Re Hope Natural Gas Company

Docket No. G-444
August 27, 1946

APPLICATION *for authority to group natural gas gathering lines and transmission mains for accounting purposes; granted subject to conditions.*

Accounting, § 49 — Grouping of gas lines.

A natural gas company, on application under General Instruction 11 of the Uniform System of Accounts Prescribed for Natural Gas Companies, may group gathering lines and group transmission mains, for the purpose of accounting for operating and maintenance expenses relating thereto, where existing gathering lines and transmission mains are so interconnected and operated that such groupings represent a reasonable accounting practice.

By the COMMISSION: It appearing to the Commission that:

(a) On February 4, 1943, Hope Natural Gas Company (applicant) filed an application, under General Instruction 11 of the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies, for permission to group, for expense accounting purposes, what it refers to as its gathering lines and its transmission mains;

(b) On September 30, 1943, applicant requested permission to postpone area accounting for gathering systems until the end of the war;

(c) On October 26, 1943, the Commission granted applicant permission to postpone area accounting for gathering systems until the end of the war;

(d) By letter of June 28, 1946, applicant furnished information supplementing its application of February 4, 1943, and restating its position with respect to the relief herein prayed for;

(e) Applicant operates what it refers to as an interconnected network of gathering lines of various sized pipe lines in one integrated area in the western, central, and southern parts of West Virginia; applicant's transmission mains are also interconnected within the same area;

(f) All of applicant's existing gathering lines and transmission mains are so interconnected and operated that the proposed grouping, for expense accounting purposes, of its gathering lines and of its transmission mains represents a reasonable accounting practice.

The Commission *orders* that:

(A) Hope Natural Gas Company is hereby authorized to group its so-called gathering lines and to group its so-called transmission mains for the purpose of accounting for operating and maintenance expenses relating thereto; provided, that the grouping

hereby authorized shall not apply to gathering lines or to transmission mains hereafter constructed or acquired which are not connected and operated as a part of its present system without prior approval by the Commission; and provided, further, that nothing contained herein shall be construed as an approval by the Commission of the company's classification of the facilities affected by this order, or as a waiver of the provisions of § 7 of the Natural Gas Act, 15 USCA § 717f, or a determination of the nature of applicant's facilities or operations for jurisdictional purposes;

(B) Authority is expressly reserved in the Commission to modify or change the grouping hereby authorized.

WISCONSIN PUBLIC SERVICE COMMISSION

Arthur Slotten et al.

v.

Wisconsin Telephone Company

2-U-2149
August 31, 1946

PETITION *by prospective customer to require a telephone company to render service; ordered that requested service be rendered.*

Service, § 179 — Undertaking to serve — Effect of discontinuance.

Discontinuance of telephone service is not in itself sufficient to constitute a valid abandonment of the undertaking of service, so as to excuse a utility from making an extension.

By the COMMISSION: Arthur Slotten, Edmund Porter, Ole Sherven, and Daniel Suchomel who reside on highway 19 between Madison and Sun Prairie filed a complaint with the Commission on February 26, 1946, requesting that Wisconsin Telephone Company be required to extend service to them from its Madison exchange. The matter was taken up with Wisconsin Telephone Company and on March 14th they informed the Commission that the four applicants were located in the territory served by the Sun Prairie exchange of the Commonwealth Telephone Company and that adequate service was available from such exchange. In addition, they called attention to the fact that Edmund Porter had previously applied for Madison service and in an order dated November 30, 1945, in docket 2-U-2077, 62 PUR(NS) 126, the Commission had held that the undertaking of service of Wisconsin Telephone Company did not include service

to the Porter premises. A notice of investigation and hearing was issued on April 6th. A brief was filed by Wisconsin Telephone Company.

APPEARANCES: Arthur Slotten, Ole Sherven, Mrs. Edmund Porter, and Daniel Suchomel, Sun Prairie, for complainants; Wisconsin Telephone Company, by Francis J. Hart, general Attorney, W. E. McGavick, Attorney, G. B. Rogers, General Commercial Manager, L. J. Fitzgerald, Commercial Engineer, and F. E. Manchester, Rate Engineer, Milwaukee, for respondents; Commonwealth Telephone Company by Harry W. Pike, Vice President Madison, for objectors; C. B. Hayden, Engineering Department, of the Commission staff.

All the respondents reside in section 14, town of Burke, Dane county, along highway 19 which is the main road between Madison and Sun Prairie, and the route of the Madison-Milwaukee toll cable of the Wisconsin Telephone Company. The nearest subscriber served by Wisconsin Telephone Company on this highway is located 694 feet southwest of the Slotten premises. Porter is located 226 feet northeast of Slotten; Sherven, 700 feet northeast of Porter; and Suchomel, 1,025 feet northeast of Sherven. The group is about 7.5 miles from Madison and 3.5 miles from Sun Prairie. Porter is the only respondent who has telephone service at the present time. Commonwealth Telephone Company furnishes such service from its Sun Prairie exchange by means of a pole line extending along a town road 1,284 feet to the rear of the Porter premises. Commonwealth Telephone Company has no facilities on highway 19 in this area.

The respondents testified that practically all of their business and social relationships are in Madison. Sherven testified that the Dane County Rural Telephone Company, predecessor to Wisconsin Telephone Company, had rendered Madison exchange service at his premises and had also served the premises occupied by Suchomel. This evidence was not before the Commission in the Porter Case (2-U-2077, *supra*).

Wisconsin Telephone Company evidence shows that the Dane County Rural Telephone Company was purchased in 1922 and that the line was rebuilt as far as the Suchomel premises in 1923. That in 1928, this line was removed following the installation of the Madison-Milwaukee toll cable and since that time no subscribers have been rendered Madison exchange service in the vicinity. In brief, Wisconsin Telephone Company contends that upon removal of their line in 1928, they withdrew their undertaking to furnish Madison exchange service in this area.

The Commission has heretofore held that the discontinuance of service is not in itself sufficient to constitute a valid abandonment of the undertaking of service by a utility. Fletcher v. Wisconsin Teleph. Co. 2-U-2118, 64 PUR(NS) 378. Under the circumstances, the facts in the case show that service to the respondents' premises is within the undertaking of the Wisconsin Telephone Company from its Madison exchange.

The Commission finds:

That the undertaking of service of Wisconsin Telephone Company in the town of Burke, Dane county, includes service to the complainants, Arthur

Slotten, Edmund Porter, Ole Sherven, and Daniel Suchomel premises in section 14 of such town, and that reasonably adequate service requires that service from the Madison exchange of said utility be furnished to said complainants.

The Commission therefore concludes:

That Wisconsin Telephone Company should be required to extend service from its Madison exchange to the said premises of Arthur Slotten, Edmund Porter, Ole Sherven, and Daniel Suchomel.

WISCONSIN PUBLIC SERVICE COMMISSION

Re City of Park Falls

2-U-2091
September 5, 1946

APPLICATION *for authority to increase municipal water plant rates; increased rates prescribed.*

Rates, § 603 — Water rates — Flat minimum charges.

A water rate schedule with a $1.50 minimum per quarter, irrespective of the demand which each size meter can handle, does not fit modern operating conditions.

By the COMMISSION: Application was filed with this Commission on September 19, 1945, by the city of Park Falls, as a water public utility, for authority to increase rates for water used in excess of 30,000 gallons per quarter per customer.

Failure of the utility to notify the Office of Price Administration of the proposed increase and to consent to the intervention of the Price Administrator in the proceedings delayed these proceedings.

APPEARANCES: N. T. Leipsig, City Attorney, Darrel Mason, City Clerk, C. E. Wells, Chairman, Board of Public Works, and Emil Pauser, Superintendent, Water Department, for city of Park Falls; P. A. Reynolds, Rates and Research Department, of the Commission staff.

Examination of the filed annual reports of the utility for the past four years shows that on an indicated rate base of $164,872, the utility has earned a return as follows:

1942	0.555%
1943	1.19
1944	1.39
1945	0.344

It is apparent that if the utility is to earn a reasonable return some upward adjustment in rates is necessary. Applicant has proposed to increase charges per thousand gallons on the last three blocks of the schedule applicable to general service. Rates now in effect are as follows:

General Service
First 9,000 gals. per quarter, 35¢ per M gallons
Next 21,000 gals. per quarter, 18¢ per M gallons
Next 45,000 gals. per quarter, 12¢ per M gallons
Next 425,000 gals. per quarter, 10¢ per M gallons
Over 500,000 gals. per quarter, 4¢ per M gallons
Minimum quarterly bill $1.50
5% penalty added if not paid within the discount period.

Fire-protection Service
$72.00 per hydrant per year (1945 charge $4,248)

Applicant requests the following schedule be made effective:

First 9,000 gallons used per quarter, 35¢ per M gallons
Next 21,000 gallons used per quarter, 18¢ per M gallons
Next 45,000 gallons used per quarter, 16¢ per M gallons
Next 425,000 gallons used per quarter, 14¢ per M gallons
Over 500,000 gallons used per quarter, 8¢ per M gallons
Minimum quarter bill $1.50.

Assuming normal operating expenses to be about $6,280 per year and adding (1) depreciation of $2,924, (2) a tax equivalent of $3,260, and (3) a return component of 4 per cent, or $6,595, a total cost of operating the Park Falls Water Department of $19,059 is noted.

The above costs have been broken down into those which vary with the water pumped, those which are capacity and demand expenses, and those which vary with the number of customers, such as meter reading, billing, collecting, etc. Each of these costs plus the fixed charges of depreciation, tax equivalent, and return component have been apportioned between fire-protection service and general service. A summary of this apportionment together with 1945 revenues is shown below:

	Total	Fire-protection Service	General Service
Total cost	$19,059	$7,106	$11,953
1945 revenues ..	13,611	4,248	9,363
Deficit	$5,448	$2,858	$2,590

Park Falls has a population of about 3,300. The present charge for fire-protection service averages $1.28 per capita. The indicated charge of $7,106 averages $2.15 per capita which is not out of line for a community of this size. In this $7,106 is included $6,262 of fixed charges. It is apparent that since the city of Park Falls is paying only $4,248 per year for fire-protection service, it is contributing less than one-half of one per cent return on the property used and useful for this service. Any moneys advanced each year by the city to the water utility for additions and improvements, in an amount approximating the deficit shown above of $2,858, should be considered additional revenue for fire-protection service and not advances from the municipality which are to be paid back at some future time.

It is noted that revenues from general service fell $2,590 short of providing a 4 per cent return. To determine how this amount can best be recovered, an analysis of sales in gallons has been made and the demands of the various sized meters have been checked.

Applying the proposed rates for general service to the sales by blocks, it is found that only about $930 of additional revenue would be obtained, or slightly more than one-third of the amount of the deficit. The type of existing schedule with a $1.50 minimum per quarter, irrespective of the demands which each size meter can handle, does not fit modern operating

conditions. Spreading the demand costs, customer costs, and about one-third of the fixed charges among the various sized meters on a demand basis, and adding the same fixed quantity of water to each size, a minimum bill graduated in accordance with each size meter is obtained as follows:

Size of Meter	Minimum Charge Per Year for 40,000 Gallons	Per Quarter
¾-inch	$8.00	$2.00
¾-inch	10.00	2.50
1-inch	16.00	4.00
1¼-inch	24.00	6.00
1½-inch	32.00	8.00
2-inch	54.00	13.50
3-inch	118.00	29.50
4-inch	208.00	52.00
6-inch	463.00	115.75

No. ¾-inch, 3-, 4-, and 6-inch meters were in use on December 31, 1945.

The above minimums would provide revenues from general service of about $6,510 per annum, leaving $5,444 of the cost of this class of service to be raised from the sale of water in excess of the minimum allowance. The estimated average revenue per thousand gallons to be obtained, based on 1945 sales, and excluding minimum-bill use, is 15.8 cents. This means that a top rate of approximately twice 15.8 cents is required. The bottom block in the schedule to which the lowest rate is attached should be for all in excess of about 2,000,000 gallons per quarter.

The Commission finds:

1. That the existing schedule of rates for water service in Park Falls is unreasonably discriminatory.

2. That the rates proposed by applicant would be unjustly discriminatory.

3. That the rates hereinafter set forth are reasonable and not unjustly discriminatory.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Mary J. Clifford et al. Customers of Boston Consolidated Gas Company

D. P. U. Nos. 7450, 7465
July 24, 1946

PETITION *by gas consumers for refund of amounts collected under fuel clause and Commission investigation of rates for gas sold under fuel clause; order of reparation denied for want of jurisdiction, and filing of new rate schedule ordered.*

Reparation, § 11 — Power of Commission.

1. The legislature has not conferred on the Department of Public Utilities any power to compel or enforce reparation from a gas company, p. 148.

Rates, § 86 — Power of Commission — Not retroactive.

2. The regulatory functions of the Department of Public Utilities with

respect to gas rates are purely prospective and not retrospective in operation, p. 148.

Reparation, § 44 — Remedy for overcharge — Contract action.

3. The remedy of a customer of a gas company in case of an illegal overcharge is by a contract action in the courts of the state, p. 148.

Reparation, § 11 — Power of Commission — Implied authority.

4. The power to order reparation for overcharges is an important power with wide implication for good or evil to the community and should be inferred only for the strongest and unanswerable reasons, p. 148.

Rates, § 303 — Fuel charge — Cost of gas to utility — OPA "ceilings."

5. Collection by a gas utility of a fuel charge was unauthorized and not in conformity with a Commission order permitting such charge in fixed proportion to increases in the cost of gas to the utility where the cost of gas to the utility, being fixed at OPA ceilings, was not increased, p. 150.

Rates, § 86 — Limitations on Commission power — Retroactive rate order — Fuel charge.

6. The Department of Public Utilities has no authority to make any order retroactively affecting the rates of a gas company which has been collecting fuel charges without authority, p. 150.

Rates, § 303 — Unauthorized fuel charge — Revenue increase — Obtainable through established procedure.

7. That a gas utility by following the established procedure relative to the filing of new rates, prices, and charges might have obtained a needed increase in revenue is no defense to a complaint against its increasing its revenue by levying an unauthorized fuel charge, p. 153.

Rates, § 303 — Fuel charge — Authorization requirement.

8. The good faith and good motives of a gas utility in levying fuel charges cannot supply the deficiency of legal authorization to make such charges, p. 153.

Rates, § 303 — Company practices under fuel clause — Reduction in rate of return.

9. The Commission, in acting on a complaint against a gas company's practices under a fuel clause, need not consider company income and expense or limit its order so that the company's earnings will not be reduced below a reasonable rate of return, p. 153.

Rates, § 645 — Scope of proceeding — Complaint against company practices — Relevant issues.

10. The adequacy, propriety, or justness of a utility's rate schedule, including the formula in a fuel clause, are not at issue in a hearing of a complaint against gas company practices under the fuel clause, p. 154.

Rates, § 235 — Right to file new schedule — Commission order reducing earnings.

11. A gas company has at all times the statutory right to file a new schedule of rates, prices, and charges, if the effect of a Commission order regarding its practice under a customer's fuel clause is to reduce its earnings below a reasonable rate of return, p. 154.

Rates, § 640 — Amendment to gas rate contract — Alteration without notice — Proceedings de novo.

12. A Commission-approved amendment to a proposed rate contract between a gas utility and its source company, unchallenged by all parties concerned, does not constitute such an alteration of a rate agreement arrived at on earlier hearings with notice as to require proceedings de novo, p. 155.

Rates, § 72.1 — Jurisdiction of Commission — Effect of Price Control Act.

13. The jurisdiction of the Department of Public Utilities over the rates charged to consumers by a gas utility and the contract between the utility and its source company was never ousted by the Emergency Price Control Act, p. 155.

Rates, § 5 — Effect of price regulation — Fuel clause.

14. The sole effect of the applicable Maximum Price Regulation on the rates of a gas utility was to render temporarily inoperative the provisions of a contract fuel clause providing that charges to consumers would vary with the cost of gas at its source, p. 155.

APPEARANCES: In both D.P.U. 7450 and D.P.U. 7465: Thomas D. Lavelle, for the petitioners in D.P.U. 7450; Robert H. Holt, for Boston Consolidated Gas Company; James W. Kelleher, William A. McDermott, Assistant Corporation Counsel, for city of Boston; Cornelius J. Moynihan, pro se. In D.P.U. 7450 only: John F. Donovan, City Solicitor, for city of Chelsea.

By the DEPARTMENT: Boston Consolidated Gas Company (hereinafter referred to as the "Company") is wholly owned by, and normally purchases substantially all of its gas from, Eastern Gas and Fuel Associates (hereinafter referred to as "Eastern").

On April 24, 1942 the Company entered into a contract with Eastern for the purchase and sale of gas, and on the same day petitioned this Department (D.P.U. 6818) for approval of this contract, pursuant to Stat 1903, Chap 417, § 6, which forbids the Company to purchase any gas until this Department has found, after public hearing, that the price to be paid for the gas to be purchased is less than it would cost the Company to make its own gas, and which provides that no contract for the purchase of gas for more than thirty days shall be made without the approval of this Department.

This contract of April 24, 1942 varied from prior contracts between the parties in two principal respects: (1) the duration of the contract was extended beyond the usual one-year term of prior contracts; and (2) it contained a "fuel clause," so-called, under which the price to be paid by the Company to Eastern for gas was to vary, in a predetermined manner, with the cost to Eastern of the coal from which the gas so sold by it was manufactured.

On June 30, 1942, in said D.P.U. 6818, the Department gave its approval to said contract in a form as amended on June 29, 1942. As amended, the "fuel clause" was modified and the fuel charge reduced in such a way as to effect a considerable

reduction in the cost of gas to the Company. As thus approved, the contract, which is still in effect, contained the following "fuel clause."

"*Fuel Charge*: Effective July 1, 1942, an additional charge shall be made for all gas purchased hereunder, which charge during each three months period subsequent to July 1, 1942, shall be in the amount of one mill per thousand cubic feet for each 2½ cents increase in the cost of coal above $5.78 per gross ton. Such cost of coal shall be the average cost of coal delivered f. o. b. the plant of the Fuel Company during the three months period ending one month prior to the application of such charge, provided that the cost of different kinds of coal used in determining such average cost shall not exceed the cost of coal of similar specifications delivered f. o. b. the plant of the Lynn Gas and Electric Company or f. o. b. the electric generating stations of the Boston Edison Company; and provided further, that the cost of coal for each of the months of March, April, and May, 1942, shall for the purpose of this charge be deemed to be $6.53 per gross ton.

"The Fuel Company shall render the Gas Company on or before the tenth day of each month, a statement showing the quantity of gas supplied hereunder during the preceding calendar month and the amount payable thereon, computed in accordance with the provisions hereof. The Gas Company shall make payment to the Fuel Company of the total amount thereof in cash on or before the fifteenth day of the month in which such statement is rendered."

On April 25, 1942, the Company filed with the Department ten revised and amended schedules of rates and charges for gas sold and delivered, Nos. M. D. P. U. 90 to 99, inclusive. M. D. P. U. 99, entitled "Miscellaneous Charges Applicable to Various Rates," contained a "fuel clause" under which the price for gas sold and delivered to the Company's customers was to vary with the cost of fuels used by Eastern in the manufacture of such gas. On May 22, 1942, the Department suspended the operation of these new schedules, and on its own motion entered upon an investigation (D.P.U. 6835) of the propriety of the rates and charges as contained in the schedules thus filed.

On June 30, 1942, the Department rendered its decision and promulgated certain orders in said D.P.U. 6835. In its decision, the Department stated in part as follows:

". . . These schedules (M. D. P. U. 90 to 99 inclusive), in so far as the basic rates are concerned are identical with those predecessor rates now on file and in effect, the only change being the addition of a fuel charge applicable to all gas sold under the several rates as set forth in Schedule M. D. P. U. No. 99. This fuel charge as set forth in Schedule No. 99 is predicated and based on the approval by the Department of a proposed contract entered into by the Boston Consolidated Gas Company with the Eastern Gas & Fuel Associates dated April 24, 1942, which contract is required to be approved by the Department (Chap 417, Acts of 1903).

"The Department, after investigation has approved the contract for purchase, which has been substantially modified after conference with representatives of the Boston Consolidated

Gas Company. The effect of these modifications particularly as applied to the fuel charge as proposed to be established in the contract for purchase of gas would make the provisions of the fuel charge as set forth in M. D. P. U. No. 99 improper and at variance with the terms of the approved contract, and therefore should be disallowed. The provisions of the contract for purchase as approved by the Department provide that the Boston Consolidated Gas Company shall pay increased prices for gas varying with the cost of fuel to the producer company and it is not unreasonable or unjust that these charges should in turn be transmitted through the means of an appropriate fuel charge to the customers of the Boston Consolidated Gas Company. To that end a reasonable fuel charge should be provided in the schedules of the Gas Company to recover a fair and equitable portion of the increment cost of coal which may be justly allocated to gas manufactured.

. . . . . .

"It is recognized that the cost of fuels to the company manufacturing gas has substantially increased during the past six months due to the conditions rising from the war, and that the proposed increase in cost to the Boston Consolidated Gas Company as a result thereof not being unreasonable should properly be transmitted to the consumers of gas at the earliest possible date to preserve and maintain the service and efficiency of the Boston Consolidated Gas Company. . . ."

In its accompanying orders in said D.P.U. 6835, the Department disallowed said "Schedule M.D.P.U. 99," approved the remaining schedules as filed on April 25, 1942, and ordered the Company to file, effective July 1, 1942 "an appropriate schedule setting forth therein a fuel charge to which reference and application may be made by various other schedules, which fuel charge shall read as follows:

"The price of all gas sold to consumers shall be increased one-tenth mill per one hundred cubic feet for each whole 2½ cents by which the cost of coal exceeds $5.78 per gross ton during the three months period ending one month prior to the effective date hereof, provided that such increase shall be adjusted October 1, 1942, and every three months thereafter on the same basis. The cost of coal shall be the average cost of coal delivered f.o.b. the plant of the producer from whom the Company purchases the major portion of all gas sold by it, provided that the cost of the different kinds of coal used in determining such average cost shall not exceed the cost of coal of similar specifications delivered f.o.b. the plant of the Lynn Gas and Electric Company or f.o.b. the electric generating stations of the Boston Edison Company. The cost of coal for each of the months of March, April, and May, 1942, shall for the purposes of this charge be deemed to be $6.53 per gross ton."

On June 30, 1942, the Company filed such a schedule (M.D.P.U. No. 100), containing a fuel charge in the last-quoted language, which schedule is still in effect.

On March 15, 1946, Mary J. Clifford and more than nineteen other customers of the Company filed a petition (D.P.U. 7450) alleging the following, in substance and effect: That the contract between the Company and

Eastern in the form as amended on June 29, 1942, and this Department's order approving the same on June 30, 1942, were and are illegal, for the reasons (a) that no notice of the filing of said amended contract was given by the Department to persons interested therein, (b) that no public hearing was held in connection therewith, and (c) "because the maximum price for which coal could be sold or contracted for had been stabilized by the Emergency Price Control Act of 1942, which was approved January 30, 1942, and by the regulations issued by the Office of Price Administration under the authority of this act, all of which regulations were in legal force and effect prior to June 29, 1942"; that the Company since June 30, 1942, has collected from its customers "certain sums of money which have been charged to these customers on account of the fuel charge set forth in the agreement of June 29, 1942"; that "this money collected by the Gas Company has been paid over to the Eastern Gas and Fuel Associates in accordance with the terms of the agreement of June 29, 1942."

The petition prayed as follows:

"1. That the order of the Department dated June 30, 1942, be revoked and that it be declared null and void.

"2. That the Gas Company be ordered to make an accounting under the supervision of the Department of all moneys and amounts of money received by the Gas Company received by it (sic) as a fuel charge from its customers since June 30, 1942.

"3. That upon such accounting being had the Gas Company be ordered to pay back and refund to said customers all such moneys so received by it.

"4. All such other orders as may seem just and equitable."

The petition, in the form as originally filed, was diffuse and lacking in precision. For example, while it attacked the validity of the contract which we approved in D.P.U. 6818, it never referred to that proceeding by docket number, but sought instead revocation of our order (in D.P.U. 6835), which involved the schedules of rates and charges filed by the Company on April 25, 1942. On the other hand, it complained of overcharges to customers under the fuel clause, so-called, without ever specifically referring to said schedules.[1]

Being doubtful of the scope and intent of the petition and doubtful of our jurisdiction to grant the relief prayed for, we set the petition down for public hearing on May 2, 1946, on the issue of the Department's jurisdiction thereof.

On April 17, 1946, the Company

[1] On May 27, 1946, and after the hearing on May 2, 1946, hereinafter referred to, this petition was amended by the addition of the following allegations: (a) that the order of June 30, 1942, in D.P.U. 6835 approving the fuel clause in the Company's schedules of rates and charges "was based on the premise that the said Gas Company should be allowed to transmit to the customers increases in the price of gas purchased by said Gas Company" under the terms of its contract with Eastern, but that "in fact there has been no increase in the price of gas paid by said Gas Company"; and (b) that said order of June 30, 1942, in D.P.U. 6835 is "arbitrary, unreasonable, and unfair to the customers of the said Gas Company for the reason that the cost of coal to the producer from which the said Gas Company buys gas has no relation to the price paid for gas by said Gas Company because the price to be paid for gas by said Gas Company has been 'frozen' by the Office of Price Administration at the highest price paid by said Gas Company in March, 1942."

filed a motion to dismiss the petition for lack of jurisdiction thereof.

Because of the public importance of the questions raised by some of the allegations in said petition, the Department began, on April 25, 1946, an investigation on its own motion (D.P.U. 7465) of the price of gas sold and delivered by the Company "so far as relates to charges made to its customers under fuel clause contained in existing schedules of rates, prices, and charges."

After due notice, both matters were publicly heard on May 2, 1946. At the commencement of the hearing it was announced by the presiding Commissioner that while both matters would be heard together, because of the substantial identity of the parties and subject-matter thereof, they would be separately considered and decided.[2]

For the purposes of said hearing on May 2, 1946, all facts well-pleaded in the petition were taken to be true, and arguments of counsel were principally addressed to the power of this Department to grant the specific forms of relief prayed for, by way of compulsory accounting and refunds to the Company's customers for allegedly unauthorized collections under the fuel clause contained in its schedules of rates and charges.

[1–4] In substance the petition sought by its second and third prayers to compel the payment of reparations or damages by the Company to its customers on account of alleged overcharges. However desirable or undesirable the legislative policy in this respect may be, we are satisfied that the legislature has never conferred on this Department any power to compel or enforce such reparations. It is clear from G. L. (Ter. Ed.), Chap 164, §§ 93 and 94 that our regulatory functions with respect to gas and electric rates are purely prospective, and not retrospective, in operation. We are of opinion that the remedy of a customer of a gas or electric company, in case of a charge to the customer of an amount in excess of that allowed by law, is by action of contract in the courts of this commonwealth, and it was so conceded by counsel for the Company in these proceedings. In any event the remedy is not in this Department. This question was considered at length in Beaser v. Edison Electric Illum. Co. (D.P.U. 836, 845, 850, 860) PUR1922E 492, 507, 510, where, after a review of the applicable statutes, it was stated, in part:

"It will be observed that there is nothing in these statutes which hints in the most remote manner at a right to reparations or damages,—which hereafter will both be included in the phrase 'reparations.'

"The petitioners argue, however, that unless reparations can be granted by this Department, they cannot be secured through the courts under the recent decision of the supreme judicial court in the Edison Case ([1922] 242 Mass, 305, 136 NE 113), and that, as a consequence, it may happen that, although the rates are excessive or discriminatory, or both, for a long period of time, no redress can be secured by those who are injured thereby.

"We are not clear that the supreme

[2] At the close of the hearings on the merits on May 28, 1946, all parties waived any objections to the incorporation of our decisions in both matters in a single opinion, so long as separate reference to docket numbers was made and so long as appropriate orders were made in each proceeding.

judicial court has decided that . . . parties who have paid higher charges . . . or have suffered definite and precise discriminations . . . are without redress in the courts. We will assume, however, for the purpose of further discussion that the supreme judicial court has so held and that parties injured in the ways above set forth will be utterly without redress unless this Commission decides that it has the power to order reparations.

"This Department is a creature of the legislature and its powers are entirely derived from the statutes of this commonwealth. Those statutes it ought, undoubtedly, to construe in a spirit of liberality and one likely to give effect to the full intention of the legislature, but it ought not, on the other hand, to strain the express powers conferred upon it to the breaking point, even to avoid what may otherwise be an undesirable result.

"The statutes themselves contain nothing which would seem to indicate an intention to give this Department the power to order reparations. . . .

"No express power to order reparations has been given us by the legislature. It can only be deduced from the statutes by a process of remote and refined reasoning. It is an important power with wide implications for good or evil to the community. It should only be inferred, therefore, for the strongest and most unanswerable reasons. We do not think such exist in this case. . . . We are, therefore, of the opinion that no power has been granted to the Commission of this Department to order reparations or damages for the causes claimed by the petitioners. . . ."

There is nothing in the subsequent history of the statutes involved to require a departure from the conclusions reached in the Beaser Case, *supra*, and we affirm its language, above-quoted, and adopt it as having force and application to the petition before us in D.P.U. 7450.

Being of such opinion, we ruled at the hearing on May 2, 1946, after argument by counsel and consideration, that we had no jurisdiction to grant the specific relief prayed for in prayers 1, 2, and 3 (*supra*, p. 6) of the petition in D.P.U. 7450. We now affirm that ruling.

Being also of the opinion, however, that the petition in substance constituted a written complaint by more than twenty customers of the Company as to the price of gas sold and delivered by the Company, we ruled in D.P.U. 7450 that we had jurisdiction of said petition as a complaint under G.L. (Ter Ed.) Chap 164, § 93,[3] and we denied the Company's motions to dismiss said petition. We now affirm those rulings.

Subsequently, after further notice, D.P.U. 7450 and D.P.U. 7465 were set down for joint public hearing on the merits on May 27 and 28, 1946,

[3] Section 93 provides as follows so far as material to these proceedings:

"On written complaint of the mayor of a city . . . where a gas or electric company is operated, or of twenty customers thereof, either as to the quality or price of the gas or electricity sold and delivered, the Department shall notify said company . . . , and shall, thereupon, after notice, give a public hearing to such petitioner and said company, and after said hearing may order any reduction or change in the price or prices of gas or electricity or an improvement in the quality thereof. . . . Such an order may likewise be made by the Department, after notice and hearing as aforesaid, upon its own motion. . . ."

and were so heard on those dates.

At the hearing on the merits, in addition to oral testimony by officers of the Company and of Eastern, there were received in evidence, among other exhibits, the following: the Company's annual returns to the Department 1941 to 1945 inclusive; the original contract between the Company and Eastern dated April 24, 1942, the amended contract dated June 29, 1942, the Department's decision and order approving the latter and the transcript of hearings held in connection therewith in D.P.U. 6818; the Department's decision and order of June 30, 1942, in D.P.U. 6835 and the Company's schedules of rates and charges filed in connection therewith.

From the evidence, the following appeared:

[5, 6] Prior to and during the negotiations between the Company and Eastern for the contract which we approved, in its amended form, in D.P.U. 6818, Eastern was experiencing substantial increases in the cost of fuels which it used in manufacturing gas, which increases were occasioned by wartime conditions, resulting especially from changes in methods of fuel transportation. The purpose of the fuel clause in this contract (hereinafter referred to as the "contract fuel clause" *supra*, pp. 2, 3) was to enable Eastern to recover from the Company the variable amount of such increases in the cost to Eastern of fuel allocable to gas production.

At the time of the proceedings in D.P.U. 6818, the Emergency Price Control Act of 1942 was in effect. Under the provisions of said act there were exempted from OPA price regulation the prices charged by various public utilities whose prices were being regulated by appropriate state and Federal regulatory Commissions, including this Department. Accordingly, the prices charged to customers by the Company, which is a public utility within the meaning of the Emergency Price Control Act of 1942, have never been fixed or regulated by the OPA. Eastern, however, because it did not sell gas to the public generally, was not classed as such "public utility," but was classified by the OPA as a coke and chemical plant, and the "ceiling price" that Eastern might legally charge for gas sold by it was fixed at the highest price charged by it in March, 1942. This maximum price was 30 cents per hundred cubic feet.

The petition in D.P.U. 6818 was filed on April 24, 1942. The hearings thereon were held on May 11, 12, and 19, 1942. On May 8, 1942, Eastern filed a petition with the OPA for exemption from the price-fixing provisions of the applicable OPA regulation so far as related to sales of gas by Eastern. This petition by Eastern, which was pending during the pendency of D.P.U. 6818 has never been favorably acted upon by the OPA. As a result, at no time material hereto, could or did Eastern legally charge the Company more than Eastern's "ceiling price" for gas. The contract fuel clause has as a consequence been wholly inoperative throughout the period in question, and at no time has the Company directly paid anything to Eastern under or on account of the contract fuel clause.

The fuel clause contained in the schedules filed by the Company on April 25, 1942, in D.P.U. 6835 (hereinafter referred to as the "customers'

fuel clause," *supra,* pp. 4, 5) was intended to enable the Company to transmit to and recover from its customers anticipated increased costs to the Company under the contract fuel clause. That it was so understood by the Company and by this Department is abundantly clear from the evidence. It was so testified herein by Company representatives, and Schedule M.D.P.U. No. 99, filed by the Company and subsequently disallowed by the Department in D.P.U. 6835, was explicit in this respect, reading as follows:

"Whenever the price for coke oven gas purchased by the company under the contract effective June 1, 1942,[4] is increased by application of the fuel charge in such contract, then the price of all gas sold to consumers shall be increased 1/10 mill per 100 cubic feet for each 9/10 mill per 1000 cubic feet of such increase in the contract price."[5]

Further, it was expressly stated by the Department in its opinion of June 30, 1942 in D.P.U. 6835:

". . . This fuel charge . . . in Schedule No. 99 is predicated and based on the approval by the Department of a proposed contract entered into by the . . . Company with . . . Eastern . . . .

". . . The provisions of the contract for purchase as approved by the Department provide that the . . . Company shall pay increased prices for gas varying with the cost of fuel to the producer company and it is not unreasonable or unjust that these charges should in turn be transmitted through the means of an appropriate fuel charge to the customers of the . . . Company. To that end a reasonable fuel charge should be provided in the schedules of the . . . Company to recover a fair and equitable portion of the increment cost of coal which may be justly allocated to gas manufactured.

. . . . .

". . . (T)he proposed increase in cost to the . . . Company . . . should properly be transmitted to the consumers of gas at the earliest possible date to preserve and maintain the service and efficiency of the . . . Company."

The existing customers' fuel clause is contained in Schedule M.D.P.U. No. 100, which is textually identical to the form ordered to be filed in D.P.U. 6835 (*supra,* pp. 4, 5).

Although the contract fuel clause never came into operation, and although in fact the average price for gas paid by the Company to Eastern during 1942–1945 was less than the average price so paid in 1941 (due to discounts on substantially increased amounts of gas purchased) the Company began in 1942 to make a fuel charge to customers under the customers' fuel clause, and has continued to do so at all times material hereto. This fuel charge was "pegged" at $.003 per hundred cubic feet and the Company's monthly bills to customers contained the following legend:

"The amount shown below includes the fuel charge of $.003 per hundred cubic feet of gas used during the current period."

During 1942–1945, fuel charges collected from customers were, by the

[4] This reference is to the Company's proposed contract of April 24, 1942, with Eastern, involved in D.P.U. 6818.

[5] It is clear from the Department's opinion in D.P.U. 6835, that the disallowance of M.D.P.U. No. 99 was for technical reasons, resulting from modification, on June 29, 1942, of the contract fuel clause.

Company's own estimate, $1,284,246. These collections, when made, were never segregated on the Company's books[6] and went into the Company's general treasury. To the extent that they increased the company's revenues, they made possible, as the Company's officials testified, the payment of larger dividends to Eastern by the Company. Eastern thus indirectly recovered a portion of its increased fuel costs, although it is clear from the evidence that no payment under the contract in excess of that permitted by Federal law was directly made by the Company to Eastern.

The prices paid for gas, estimated amounts collected as fuel charges, net earnings of and dividends paid by the Company are shown in the following table:

Year	Average Price Paid Per Hundred Cubic Feet of Gas	Estimated Fuel Charges Collected from Customers	Adjusted Net Earnings Per Share	Dividends Per Share	Total Dividends Paid
1941	$.2837	$(None)	$3.04	$2.50	$791,940.
1942	.2818	156,173.	3.08	2.75	871,134.
1943	.2805	357,785.	4.39	4.00	1,267,104.
1944	.2807	379,307.	3.99	3.00	950,328.
1945	.2818	390,981.	3.98	3.25	1,029,552.

On the evidence, we find and rule that the collections made by the Company from its customers as a fuel charge under the customers' fuel clause (D.P.U. 6835, Schedule M.D.P.U. No. 100) were unauthorized and not in conformity with our order. The Department has no power in this case to make any order retroactively affecting the Company's rates. Nor can we enforce reparations. We here attempt to do neither, since any remedy that may exist is not within the jurisdiction of this Department.

The Company has urged that its action was legal and in literal compliance with the text of our order in D.P.U. 6835.

We cannot agree with its argument:

The Company contends that Schedule M.D.P.U. No. 100, filed in compliance with our order of June 30, 1942, in D.P.U. 6835 (*supra*, pp. 4, 5) is textually bare of any reference to the contract fuel clause, that it is not contingent or dependent thereon, that it merely sets up the price of coal as a general measure or index of increases or decreases in the costs of gas distributed by it to its customers, and that the contract fuel clause and customers' fuel clause operated independently of each other.

It is true that M.D.P.U. No. 100 and the order on which it is based do not explicitly refer to the contract fuel

[6] Although fuel charge collections were never segregated, page 200 of the Company's return to the Department for the year 1942 contained the following:

"Note: A contingent liability of $191,083.50 for a fuel charge included in the purchased gas contract approved by the Department of Public Utilities on June 30, 1942, is not included in the liabilities, and has not been included in the expenses, of the year because the payment of this fuel charge is subject to the approval of the Office of Price Administration, and no action has yet been taken by it on the seller's application for such approval."

The Company's 1943 return contained a similar note as to a "contingent liability of $628,265.81."

The 1944 and 1945 returns contained no such statements because by then the Company had concluded that "there would be no retroactive order by the OPA" and that it, therefore, had no such contingent liability.

clause, thus differing in this respect from M.D.P.U. No. 99 (*supra*, p. 12). But it is clear from the text of the accompanying opinion in D.P.U. 6835 that the customers' fuel clause was predicated upon the contract fuel clause and was intended to operate as a means of transmitting to and collecting from customers amounts that the Company might have to pay to Eastern under the contract fuel clause. More important, it was several times admitted in these proceedings by the Company's officials that M.D.P.U. No. 99 was intended so to operate and that the Company was aware of the language used by us in our said opinion. Moreover the record is bare of any evidence that the Company, in D.P.U. 6835, urged upon this Department the general cost of coal or any other commodity as an index of increased costs justifying a customers' fuel clause in its rate structure.

We cannot agree that our order in D.P.U. 6835 is so far separable from its accompanying opinion that the plain language of the latter must perforce be wholly disregarded, and we find unconvincing the Company's testimony that the cost of coal was set up as an independent measure of cost of gas to the Company.

[7, 8] In further justification of its position, the Company argues that its action has actually benefited its customers, since if the Company had not made these fuel charge collections, it would have been forced to file a schedule of higher rates, prices, and charges, because of general increased operating costs. Partly for this purpose, the Company introduced evidence of increased operating costs since 1942.

It is possible that the Company's contention may factually be true. We make no finding whatever in this respect, as the general subject-matter of the Company's rate structure and earnings is outside the scope of these proceedings. However, the Company's position is wholly untenable, for it has no right to charge customers, indirectly, amounts which it might obtain from customers directly and legally by following the procedures outlined in G. L. (Ter. Ed.), Chap 164, § 94, relative to the filing of schedules of rates, prices, and charges. As creditable as the Company's motives may have been, and even though it might be shown that its customers actually benefited thereby, the Company's unilateral action in this respect did not conform to law, and its good faith and good motives cannot supply the deficiency of legal authorization to make the fuel charges which in fact it did make.

[9] The Company has argued that the Department is not merely powerless to make any order retroactively affecting its rates, but that there are other limitations on our order-making power in these proceedings. After pointing to its actual earnings per share during 1942–1945, which it regards as inadequate even with the inclusion of the fuel charge collections, it contends that in making any order the Department must take into consideration the Company's present income and expense, and therefore may not make any order, either by way of abolition or reduction of the fuel charge or amendment or classification of our order in D.P.U. 6835, the effect of which will be to reduce the Company's earnings below a reasonable rate of return. In other words,

the Company says that the Department cannot either terminate or alter the fuel clause, if the result will deprive the Company of any revenue, without simultaneously substituting something in place of such revenue, so that the Company will earn as much as it has been earning heretofore. In this connection, the Company introduced evidence of increased costs of operation and other data which would be pertinent in a general rate case.

In our opinion the Company's argument is based on a mistaken theory of the purpose and scope of these two proceedings, neither of which involves any questions relating to the adequacy or inadequacy of the Company's general rate structure.

[10] The petition in D.P.U. 7450 complains neither of the propriety of the Company's contract with Eastern nor of the justness and reasonableness of the Company's schedule of rates, prices, and charges, including the formula included in the customers' fuel clause. It complains merely of the Company's actual practices under the customers' fuel clause, which practices it contends resulted in collections in excess of those permitted by our order in D.P.U. 6835. The petitioners' counsel properly disclaimed any intention or attempt to go into the adequacy or inadequacy of the Company's rate structure, and it would not have been open to him to do so under that petition even if the Company's earnings had been shown to be greatly in excess of what they were.

Likewise, our investigation in D. P.U. 7465 was expressly limited to "the price of gas sold and delivered. . . . so far as relates to charges . . . under fuel clause contained in existing schedules," and the record shows that at the outset of our hearing on the merits the presiding Commissioner announced that the scope of the hearing was limited to the facts as to the Company's actual collection practices under the customers' fuel clause, and that questions of the Company's general rate structure were not involved.

In point of fact, no evidence was offered which had the slightest tendency to show that the actual rates contained either in the contract fuel clause or the customers' fuel clause are in any way unjust or improper or ought now to be disallowed.

[11] We therefore have no occasion to disturb either fuel clause so far as the rates therein contained are concerned. We have, however, found and ruled that our order in D.P.U. 6835 was intended to operate as a means of reimbursement to the Company for payments actually made to Eastern by reason of the contract fuel clause. Under such circumstances, we have the power to make an appropriate order requiring the filing of a new customer's fuel clause containing the same fuel charges but phrased in such language as to make crystal clear the conditions under which it shall operate (See, also G. L. (Ter. Ed) Chap 164, § 76). If the effect of such order is to reduce the Company's earnings below a reasonable rate of return, then the initiative in that respect must rest on the Company, which has and at all times has had the statutory right to file a new schedule of rates, prices, and charges. G. L. (Ter. Ed.) Chap 164, § 94.

On the other hand, by means of such an order and at such time as the

fuel clause in the contract with Eastern becomes operative due to the permanent removal of Federal restrictions thereon, the Company will be able to make lawful collections of fuel charges under the customers' fuel clause, without further application to this Department.

The petitioners in D.P.U. 7450 argue that "the order of the Department dated June 30, 1942" be declared null and void and be revoked, first, because no notice or hearing were given or held in connection therewith and, second, because the Department was powerless to authorize a price for gas in excess of that permitted under applicable OPA regulations.

[12] The Department promulgated two orders on June 30, 1942, in D.P.U. 6818 and D.P.U. 6835, respectively. D.P.U. 6818 dealt with the contract between the Company and Eastern. Taking judicial notice of the contents of our docket in said D.P.U. 6818, we find that the provisions of law relative to notice and public hearing were fully complied with; that public hearings were held on May 11, 12, and 19, 1942; that thereafter all parties appearing in said proceedings participated in conferences which resulted in an amendment to the contract which was subsequently approved by the Department; and that no party sought a review of said order in the supreme judicial court, a course which was open under G. L. (Ter. Ed.) Chap 25, § 5. In our opinion the amendment as filed did not constitute such an alternation of the proposed contract as to require proceedings de novo, and the conferences which took place were proper practice under the circumstances.

As to our order of June 30, 1942, in D.P.U. 6835, which dealt with the schedules of rates, prices, and charges filed by the Company under the authority of G. L. (Ter. Ed.) Chap, 164, § 94, no notice or public hearing were required by law in connection therewith.

[13, 14] As to the effect of the Emergency Price Control Act of 1942 on the jurisdiction and powers of this Department, that law and the Federal regulations issued thereunder expressly preserved to this Department jurisdiction over the rates charged to customers by the Company, and in our opinion our jurisdiction over the contract between the Company and Eastern was never ousted by Federal law, especially in view of our specific statutory duties under Stat 1903 Chap 417, § 6. The sole effect of the applicable Maximum Price Regulation was to render inoperative the provisions of the contract fuel clause during the effective period of said regulation.

The petitioners in D.P.U. 7450 filed fourteen requests for rulings, which are herein incorporated by reference. We grant Nos. 3, 6, and 8. We deny Nos. 1, 2, 10, 11, 12, 13, and 14. For reasons stated in our opinion, we deny Nos. 4, 5, 7 and 9 as applied to the facts appearing in these proceedings.

Accordingly, after notice, public hearing, investigation, and consideration in each of D.P.U. 7450 and D.P.U. 7465, it is:

Ordered (in D.P.U. 7450) that the motion to dismiss filed in these proceedings by the Boston Consolidated Gas Company be and hereby is dismissed; and it is

Further ordered (in each of D.P.U. 7450 and 7465) that the Boston Con-

solidated Gas Company file with the Department on or before July 31, 1946, to become effective August 1, 1946, an appropriate schedule setting forth therein a fuel charge to which reference and application may be made by various other schedules, which fuel charge shall read as follows:

"Whenever the price for coke oven gas purchased by the Company under the contract approved June 30, 1942, is increased by application of the fuel clause in such contract, then the price of all gas sold to consumers shall be increased one-tenth mill per one hundred cubic feet for each whole 2½ cents by which the cost of coal exceeds $5.78 per gross ton during the three months period ending one month prior to the effective date hereof, provided that such increase shall be adjusted October 1, 1946, and every three months thereafter on the same basis. The cost of coal shall be the average cost of coal delivered f.o.b. the plant of the producer from whom the Company purchases the major portion of all gas sold by it, provided that the cost of the different kinds of coal used in determining such average cost shall not exceed the cost of coal of similar specifications delivered f.o.b. the plant of the Lynn Gas and Electric Company or f.o.b. the electric generating stations of the Boston Edison Company."

And it is

Further ordered (in D.P.U. 7465): That the Department's investigation, upon its own motion (D.P.U. 7465) of the price of gas sold and delivered by the Boston Consolidated Gas Company, so far as relates to charges made to its customers under fuel clause contained in existing schedules of rates, prices, and charges be and hereby is terminated and discontinued.

FEDERAL POWER COMMISSION

Re City of Lockport et al.

Projects Nos. 1217, 16
April 23, 1946

APPLICATION *for amendment of power project license to permit additional diversion of water; dismissed.*

Water, § 18.2 — Diversion for hydroelectric project.

An application for amendment of a power project license to include authorization to divert and use an additional amount of water at Niagara Falls for power purposes, under the Treaty of 1910 between the United States and Canada, should be denied when the company does not show that such amendment would be in the public interest, or that such diversion and use through existing facilities would be best adapted to a comprehensive plan for developing the Niagara river or best adapted to a comprehensive plan for improvement and utilization of water power development or the water power resources of the region, although continuous temporary diversion and use of such water may be continued.

Order Dismissing Applications and Granting Temporary Authorization

By the COMMISSION: Upon consideration of an application filed August 15, 1934, by the city of Lockport, New York, for license for Project No. 1217 and upon consideration of application filed April 23, 1936, by The Niagara Falls Power Company for amendment of the license for Project No. 16; and

It appearing that: (a) both of the above applications sought authority to divert from the Niagara river, New York, and use for the generation of hydroelectric energy 275 cubic feet seconds of water, the last portion of water which may be diverted and used for power purposes under the Treaty of 1910 between the United States and Canada, The Niagara Falls Power Company already being authorized to divert and use 19,725 cubic feet seconds of water through Project No. 16 located in Niagara Falls, New York. (b) Extensive hearings were held on the proposals at which representatives of the state of New York, the Seneca Indians, the city of Lockport and the company participated; (c) A petition filed by the Seneca Indians for permission to intervene in the proceedings has already been dismissed; (d) The application filed by the city of Lockport has not been pressed and the city has not shown any intention to proceed with the plans submitted; (e) The company has not shown that diversion and use of the 275 cubic feet seconds in question through its existing facilities would be the most efficient use which can be made of such water at Niagara Falls or would generate the largest amount of power which could be generated by the use of such water in this region;

The Commission *finds* that: (1) The application filed by the city of Lockport for Project No. 1217 should be dismissed; (2) The company has not shown that amendment of the license for Project No. 16 to authorize diversion and use of the 275 cubic feet seconds in question would be in the public interest, or that such diversion and use through its existing facilities would be best adapted to a comprehensive plan for developing the Niagara river or best adapted to a comprehensive plan for improvement and utilization of water power development or the water power resources of the region; (3) The application filed by the company for amendment of the license for Project No. 16 to authorize diversion and use of the 275 cubic feet seconds in question should be dismissed; (4) Continued temporary diversion and use of the 275 cubic feet seconds in question by the company through its existing facilities in Project No. 16 should be authorized until issuance of a license authorizing other diversion or use of said 275 cubic feet seconds or until other circumstances justify termination of such temporary authorization.

It is *ordered* that: (A) The application of the city of Lockport for license for Project No. 1217 be hereby dismissed; (B) The Application of The Niagara Falls Power Company for amendment of license for Project No. 16 to include authorization to divert and use 275 cubic feet seconds be hereby dismissed; (C) The Niagara Falls Power Company is hereby au-

thorized temporarily to continue to divert and use said 275 cubic feet seconds of water under the same terms, conditions, restrictions, and provisions as presently carried in the amended license for Project No. 16 authorizing diversion and use of 19,725 cubic feet seconds; provided, that this temporary authorization shall terminate upon the further order of the Commission or upon the issuance of a license otherwise authorizing the diversion and use of said 275 cubic feet seconds

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MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Cambridge Electric Light Company

D. P. U. 7452
July 16, 1946

PETITION *for authority to issue notes to pay for additions to electric plant; approved with limitations.*

Security issues, § 52 — Necessity of issuance — Plant replacement fund.

A utility company will not be permitted to issue notes in return for outside loans for additions to its plant until plant replacement fund assets have been utilized, since minimized outside borrowing effects reduced operating expenses.

By the DEPARTMENT: The Cambridge Electric Light Company on March 28, 1946, petitioned the Department for authority to issue its notes from time to time up to an amount not exceeding at any one time $3,338,000, all of such notes to be dated prior to March 31, 1948, to mature not later than December 31, 1951, and to bear interest at a rate not exceeding 2 per cent per annum; said notes to be issued in order to provide funds as the same may be required from time to time to pay for necessary additions to its plant and property and to retire existing bank debt maturing June 30, 1946, in the principal amount of $500,000.

After due notice a public hearing was held on April 30, 1946, at which no one appeared in opposition to the petition. At said hearing the company filed exhibits showing the plant expenditures since the last permanent financing (D. P. U. 1200—May 24, 1923) and outlining in detail the contemplated future construction with the amounts of money required therefor. The total of proposed capital expenditures for the period January 1, 1946, to December 31, 1948, aggregates $4,399,500. The principal project for which the borrowing is required is a new steam generating plant to be located on First street, Cambridge. It was estimated in January, 1946, that this new generating plant consisting of a 15,000 kilowatt turbine generator and two 200,000-pound per hour high pressure boilers, together with the necessary structures and accessory equipment will cost $3,560,300. The remaining balance of estimated plant expenditures is made up of nu-

merous small projects. Anticipated retirements of plant within this period are estimated to be but $319,900.

Subsequent to this petition and public hearing the company filed with the Department a petition for authority to issue its common stock to retire the above-mentioned outstanding bank debt of $500,000. The Department on June 28, 1946, issued an order approving the issuance of 3,400 shares of common stock to retire said bank debt (D. P. U. 7495). With the issuance of these shares the company will have 65,800 shares of common stock outstanding with a par value of $25 per share, totaling $1,645,000. Premium paid in on the stock will total $1,203,000 and there will be no bank debt. The plant investment of the company on December 31, 1945 was $8,631,237.56 and the depreciation reserve on the same date was $3,780,515.42 or 46.14 per cent of the depreciable property of the company. The total corporate surplus of the company on December 31, 1945, was $4,429,771.10 and of this amount $3,678,700.77 is represented by "Surplus Invested in Plant."

It has been the policy of the company in recent years to fund its depreciation and on December 31, 1945, the company had a fund entitled "Plant Replacement Fund Assets" of $1,521,605.46. Due to lack of materials during the war years replacements of plant have been at a minimum and the fund has increased to this relatively large amount. Income from the fund is small and is well below the rate of interest to be paid on the proposed borrowings. It is estimated that Plant Replacement Fund Assets to become available within the period of the proposed construction program will total $2,518,111. As is apparent, the borrowing contemplated by this petition will only finance in part the planned construction. The balance of the funds required are to be made available from Plant Replacement Fund Assets. A footnote on the company's exhibit filed at the hearing reads as follows: "Borrowing from Plant Replacement Assets would replace with new property, property not yet retired as of December 31, 1948. It would be expected that if the requirements of the company for financing new equipment subsequent to December 31, 1948, necessitated new capital to an extent greater than the amount of net additions in the period, this borrowing from Plant Replacement Assets would be considered to have been an advance replacement of property then retired to the extent of the borrowing, i.e. $1,024,248.14."

The company has been hesitant to use this fund for additions to its plant and property and has limited its use strictly for replacement purposes. It was stated by the company's representatives that retention of such a sum was considered essential under the long-established practice of the Department in limiting amounts of permanent financing approved to "net additions" to property, plant and equipment since the balance sheet date of the last previously approved financing. This practice, in their judgment, makes incumbent upon the company retention of an amount in Plant Replacement Fund Assets or correspondingly liquid resources of the maximum amount by which potential replacements within a year might exceed the funds to be set aside for depreciation in that year.

We are of the opinion that under

the prevailing circumstances the amount in the "Plant Replacement Fund Assets" over and above the accumulations of the three years preceding the borrowing, which we feel would be a sufficient sum to take care of the maximum replacement requirements in any one year, should be used for plant purposes before outside borrowing is made. We are informed that the funds available at December 31, 1945, under this rule amounted to $684,959, and that by the end of the proposed 3-year construction period the entire amount of $1,521,605 now available will have been so utilized and that under present estimates the amount of Plant Replacement Fund Assets retained at December 31, 1948, will be reduced to approximately $700,000. The company will in effect be borrowing from itself and in subsequent petitions for the issuance of permanent financing amounts so borrowed and shown to have been invested in additional property, plant and equipment will be available for increasing the amount of net additions for the period against which the issuance of securities should be authorized. No hardship will then result upon the company in future permanent financing, tentative plans for which were disclosed in the exhibit.

In our opinion, such a procedure is definitely in the public interest, for by minimizing the necessity of outside borrowing, it will tend to reduce the company's operating expenses.

The accounting and engineering divisions of the Department have checked the accounts and inspected the property of the company as of December 31, 1945, and recommend that the petition be granted and at such time as the company applies for permanent financing of the proposed new construction a check of the accounts and an inspection of the property will then be made by the divisions.

Accordingly, after notice, public hearing, investigation, and consideration, the Department

Votes, that the issuance of evidences of indebtedness payable at periods of more than one year after the date thereof in such amounts that the principal of such notes outstanding at any one time shall not exceed $3,338,000 is reasonably necessary for the purposes for which such issue of notes has been authorized, provided that such notes may not be issued other than to provide additional funds required after utilizing all Plant Replacement Fund Assets other than those accumulated in the three years preceding the first of the month in which the initial notes under this authorization may be issued; and it is

Ordered, that the Department, subject to the limitation hereinbefore voted, hereby approves and authorizes the issue by the Cambridge Electric Light Company of evidences of indebtedness, payable at periods of more than one year after the date thereof in amounts not exceeding a maximum of $3,338,000 to be concurrently outstanding, all of such notes to be dated prior to March 31, 1948, to mature December 31, 1951, and to bear interest at a rate not exceeding 2 per cent per annum, the proceeds of such notes to be used as may be required from time to time to pay for necessary additions, extensions, and betterments to the plant and property of said company, and for no other purpose.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

$37,000,000 Program Planned By Ohio Public Service

A $37,000,000 construction program was announced recently by the Ohio Public Service Company as it officially celebrated its 25th anniversary.

R. E. Burger, president, said the expansion program was already under way and would be spread over the next five years.

Principal units in the program are three additions to generating stations, two near Bellaire and one at Lorain, and improvements to other generating plants at Warren, Marion, and Mansfield. Cost of this work will be approximately $20,000,000.

The rest of the expense will go into building new transmission lines and auxiliary facilities.

Plans to Increase Natural Gas Transmission Facilities

THE HOPE NATURAL GAS COMPANY, Clarksburg, West Virginia, has applied for authority to construct additional gas transmission facilities in West Virginia at an approximate cost of $4,600,000.

The construction proposed includes installation of an aggregate of 2,400 HP compressor capacity at the Oscar Nelson station in Wyoming county, an aggregate of 1,600 HP compressor capacity at the Loup Creek station in Wyoming county, an aggregate of 2,400 HP at Jones Compressor station in Gilmer county, and an aggregate of 4,000 HP compressor capacity in Hastings compressor station in Wetzel county, together with a new boiler of 125,000 pounds per hour capacity. Loop lines proposed consist of 20-inch pipe line aggregating about 58 miles.

New Bulletin on Jacks for Utilities

"AROUND the Utilities World with Simplex Jacks" is the title of Bulletin U46, recently published by Templeton, Kenly & Company, 1020 South Central avenue, Chicago 44, Illinois.

This attractive 8-page bulletin illustrates and contains full information, specifications, and prices on the various Simplex jacks used by electric, telephone, telegraph, gas, and water companies, and Federal, state, and municipal departments.

In addition to the Simplex Jacks which have been widely used by the utilities for decades, a number of new jacks are shown.

Philadelphia Electric Co. Will Install Two New Generators

THE Philadelphia Electric Company will install two new generators in its Barbadoes Island electric generating station, in Norristown, Pa., to meet increasing demands for electric power.

Work will be started as promptly as possible, with the first unit scheduled to be in operation in the fall of 1948.

H. P. Liversidge, president, in making the announcement said that electric power demands in the metropolitan Philadelphia area are increasing rapidly. Even with the additional power to be produced soon by two new 150,000-kilowatt generators being installed in the company's Southwark generating station in Philadelphia, it is estimated the steady growth in demand in this area will require additional electric generating facilities in 1948. This will be met by enlarging the Barbadoes Island station.

Named Merchandising Supervisor for Fluorescent Products

F. R. ARCHER has been named merchandising supervisor of fluorescent products for Sylvania Electric Products Inc., according to an announcement made by B. K. Wickstrum, general sales manager of the lighting division.

In his new capacity Mr. Archer, who has been with Sylvania Electric since 1940, will be responsible for the promotion of the company's line of cold cathode fluorescent tubing, long slim fluorescent and cold cathode "K" lamps. Previously, he supervised the sales and development of photographic lamps, and during the war he was product manager of Marine lighting working with the submarine section of the United States Navy.

New Lightning Arrester For Rural Lines

THE Hi-Stroke Rural Arrester, a new heavy-duty expulsion-type arrester for lightning protection on rural lines has been announced by the transformer division of the General Electric Company. The new arrester is designed specifically for rural systems and is available in 6- and 9-Kv ratings.

A unique feature of this arrester is the location of the internal gap in an interrupting chamber which contains gas-evolving material in the form of cellulose fiber spheres. A reserve column of spheres located above the interrupting chamber compensates for power-current erosion by replenishing the supply of the spheres in the arc interrupting chamber after each discharge of the arrester.

New Standards for Three-phase Distribution Transformers

STANDARDS for three-phase, pole-type distribution transformers, rated 150 kva and smaller have been published in the third report of the Edison Electric Institute-National Electrical Manufacturers Association Joint Committee on Standards for Distribution Transformers.

The committee, organized to develop standards for the entire range of single-phase and three-phase distribution transformers, has published two earlier reports. The first covered single-phase, pole-type units, of 25 kva and smaller; the second extended single-phase ratings through 100 kva. The committee plans to carry on its work both with respect to ratings on which reports have been issued, and on additional ratings within its scope.

Okonite Bulletin Describes Asbestos Protected Cables

A NEW illustrated bulletin describing the principal types of Okobestos heat and corrosion resistant wires and cables has been issued by The Okonite Company. It has been prepared to furnish an over-all picture of a group of products each insulated with impregnated felted asbestos and designed to transmit electrical power uninterruptedly where high temperatures are encountered in continuous service.

Among the types of Okobestos wires and cables described in this 8-page reference publication are power cables, apparatus cables, multi-conductor control cables, switchboard wires and appliance wire.

The new folder includes detailed information about all principal standard Okobestos constructions as well as the voltages, operating temperatures and work locations for which each type is recommended. Known as bulletin OK-2061, it is available upon request made to The Okonite Company, Passaic, New Jersey.

Construction Loans Announced

CONSTRUCTION loans—chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

Delaware Rural Electric Association, Greenwood, Del., $227,000.

McDonough Power Coöperative, Macomb, Ill., $265,000.

Whitley County Rural Electric Membership Corporation, Columbia City, Ind., $120,000.

Decatur County Rural Electric Membership Corporation, Greensburg, Ind., $140,000.

Eastern Iowa Light and Power Coöperative, Davenport, Iowa, $350,000.

Green River Rural Electric Coöperative Corporation, Owensboro, Ky., $632,000.

Lake Region Coöperative Electrical Association, Pelican Rapids, Minn., $550,000.

Roosevelt County Electric Coöperative, Inc., Portales, N. M., $520,000.

Blue Ridge Electric Membership Corporation, Lenoir, N. C., $1,220,000.

Eastern Oregon Electric Coöperative Association Weston, Ore., $215,000.

Whetstone Valley Electric Association, Inc., Milbank, S. D., $250,000.

Dickens County Electric Coöperative, Inc., Spur, Tex., $450,000.

Hayfield Electric Coöperative, Iron River, Wis., $105,000.

Mountain View Electric Association, Inc., Limon, Colo., $421,000.

Tri-County Electric Coöperative, Inc., Madison, Fla., $188,000.

South Eastern Iowa Coöperative Electric Association, Mt. Pleasant, Ia., $535,000.

Caney Fork Electric Coöperative, Inc., McMinnville, Tenn., $1,025,000.

Tri-County Electric Association, Inc., Sundance, Wyo., $855,000.

Grady County Electric Membership Corporation, Cairo, Ga., $89,000.

Red River Valley Coöperative Power Association, Halstad, Minn., $520,000.

Tombigbee Electric Power Association, Tupelo, Miss., $31,000.

Lane County Electric Coöperative, Inc., Eugene, Ore., $100,000.

Kingsbury Electrical Association, Inc., De Smet, S. D., $373,000.

Lower Valley Power and Light Company, Freedom, Wyo., $179,000.

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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY *(continued)*

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PROFESSIONAL DIRECTORY (concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

A

Albright & Friel, Inc., Engineers 31
American Appraisal Company, The 29

B

Babcock & Wilcox Company, The 24-25
*Baldwin Locomotive Works, The .....
Barber Gas Burner Company, The 3
Black & Veatch, Consulting Engineers 31
*Blaw-Knox Division of Blaw-Knox Company ...

C

Carter, Earl L., Consulting Engineer 31
Cleveland Trencher Co., The 27
Combustion Engineering Company, Inc. 16-17
Crescent Insulated Wire & Cable Co., Inc. ... 13
*Cummins Business Machines Division of A. S. C. Corporation .....

D

Davey Compressor Company 28
*Davey Tree Expert Company, The .....
Day & Zimmermann, Inc., Engineers 29
Dodge Division of Chrysler Corp. 19

E

Electric Storage Battery Company, The .....Outside Back Cover
Electrical Testing Laboratories, Inc. 29

F

Ford, Bacon & Davis, Inc., Engineers 29
*Ford Motor Company .....

G

*General Electric Company .....
*General Motors Truck & Coach Division .....
Gilbert Associates, Inc., Engineers 29
*Gilbert Associates, Inc., Industrial Relations Department .....
Gilman, W. C., & Company, Engineers 31
Grinnell Company, Inc. 20

H

Harris, Frederic R., Inc., Engineers 29

I

International Harvester Company, Inc. 23

J

Jackson & Moreland, Engineers 31
Jensen, Bowen & Farrell, Engineers 31

K

Kinnear Manufacturing Company, The 11
Kuljian, H. A., & Company, Engineers 30

L

Leffler, William S., Engineers 30
Loeb and Eames, Engineers 30
Lucas & Luick, Engineers 31

M

*Main, Chas. T. Inc., Engineers .....
Manning, J. H., & Company, Engineers 30
Marmon-Herrington Co., Inc. 7
McCormick & Baxter Creosoting Co. .....Inside Front Cover
Mercoid Corporation, The .....Inside Back Cover

N

Newport News Shipbuilding & Dry Dock Co. .. 18

P

Penn-Union Electric Corporation ..Inside Front Cover
Public Utility Engineering & Service Corporation 30

R

Recording & Statistical Corp. 15
Regester, Robert T., Consulting Engineer 31
Remington Rand Inc. .....
Ridge Tool Company, The .....
*Ripley Company, The .....

S

Sanderson & Porter, Engineers 30
Sangamo Electric Company 26
Sargent & Lundy, Engineers 30
Schulman, A. S., Electric Co., Contractors 31
Sloan, Cook & Lowe, Consulting Engineers 31
Stekert, Martin M. 32
*Stone & Webster Engineering Corp. .....

T

Toeppen, Manfred K., Engineer 31

W

Weisbach Engineering and Management Corporation 27
White, J. G., Engineering Corporation, The ... 31

Professional Directory 29-31

*Fortnightly advertisers not in this issue.

M
TE

FOR
ALSO

Me
Co
pe
Ce
TH

Th

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